



Program Overview



Brendan Burke, Project Director November 2012

Agenda



- **•CHESS Value to Army Contracting Officers**
 - •CHESS Organization Relation to PEO EIS, ASA(ALT) and
- CIO/G-6
- ***CHESS Operational Concept**
- ***CHESS Authority**
- **•CHESS Waivers**
- CHESS Applied Standards and Policy
- •CHESS Contracts and Agreements
 - Army Desktop and Mobile Computing/Consolidated Buy-2 (ADMC-2/CB)
 - Information Technology Enterprise Solutions-2 Hardware (ITES-2H)
 - ITES-3H Update
 - Information Technology Enterprise Solutions-2 Services (ITES-2S)
 - Information Technology Services-Small Business (ITS-SB)
 - Enterprise Software
- **CHESS IT e-mart**
- Contracting Officers' Frequently Asked Questions
- *Questions and Comments

CHESS Value to Army Contracting Officers



The CHESS Director's intent is to provide:

- Army enterprise level hardware, software and services contracts at significant volume level discounts
- Assured compliance with DoD and HQDA policies on standardization and interoperability
- Experienced contractors with knowledge and resources to accelerate new technology migration efforts in accordance with Army and DoD common operating environment architecture
- Decentralized acquisition methods that can apply local contracting policies and procedures against CHESS contracts
- Local credit for small business to support organizational business goals

The CHESS Mission Statement:

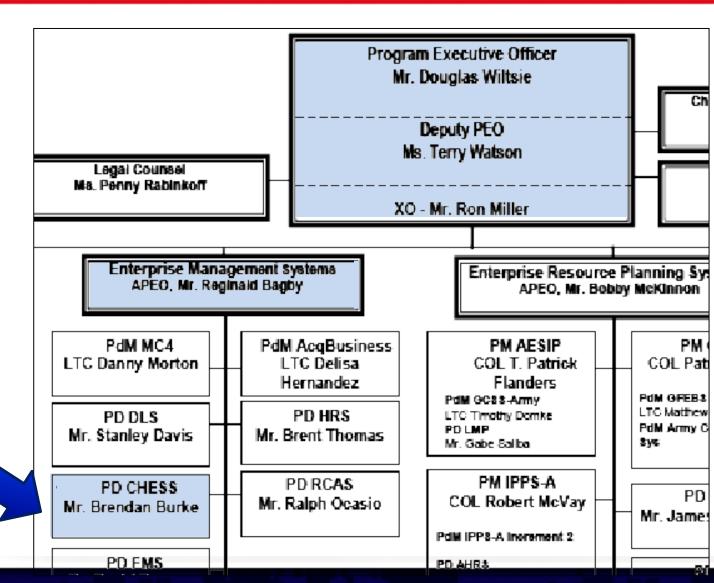
"Be the Primary Source to support the Warfighter's information dominance objectives by developing, implementing and managing commercial information technology contracts that provide enterprise-wide net-centric hardware, software and support services for the Army."

CHESS Organization Relation to PEO EIS, ASA(ALT) and CIO/G-6



CHESS is a Project Directorate in PEO EIS, under ASA(ALT).

IT contracts are established and managed within CIO/G-6 standards and policies.



CHESS Operational Concept

ITES-2H

End to End

Solutions

Servers

Networking



NETCOM

- Army Network Architecture
- Army Golden Master (AGM)

<u>Army Contracting Command</u> (ACC)

Enterprise-wide Contracts

Customer IT Acquisition Requirement



- Hardware/Software/Servic
- Streamlined/Decentralized Acquisitions
- Performance
- Small Business Credits

DoD

CB Jan

ADMC-2
Handheld,
Desktop,
Notebooks and
Printers

ITS-SB

Enterprise IT
Services, Small
Business
SetAside
Fixed Price,
T&M, Cost

ITES-2S Enterprise

IT Services Performance Based Fixed Price, T&M, Cost Enterprise
Software
Initiative
BPAs
Army
Enterprise

Software

Licensing

Agreements

CHESS IT e-mart

CHESS Authority - AFARS



CHESS is the mandatory source for commercial IT purchases

"...Purchasers of commercial hardware and software must satisfy their IT requirements by utilizing CHESS contracts and DoD enterprise software agreements first regardless of dollar value. Any purchase made outside of CHESS contracts requires a waiver."

AFARS 5139.101 (S-90) (a)

- "... If no small business capability exists, CHESS contract vehicles are the preferred source for acquisition of IT."
- "... Waiver not required for IT services. However, if IT hardware and software are required as part of a non-CHESS IT services contract, a waiver for the hardware and software is required."

AFARS 5139.101 (S-90) (b)

CHESS Authority - Army CIO/G-6



CHESS is the "primary source" for purchases of COTS software, desktops, and notebook computers regardless of dollar value. "Primary source" requires CHESS waiver to use other source(s)

- "... This regulation applies to the Active Army, the Army National Guard /Army National Guard of the United States, and the US Army Reserve unless otherwise stated." (Applicability, p.i.)
- "... It applies to information technology contained in both business systems and national security systems (except as noted) developed for or purchased by the Department of Army." (Summary, p.i.)
- "... It applies to IT contained in command and control (C2) systems, intelligence systems (except as noted), business systems, and (when identified) national security systems (NSS) developed or purchased by the Department of Army (DA)." (1-1. Purpose)

Army Regulation 25-1: Army Knowledge Management and Information Technology Management (04 DEC 2008)

CHESS Waivers



Automated waiver process at http:// chess.army.mil

- Availability:
 - Products not offered on CHESS contracts
 - Lower price available on non-CHESS contract
- CHESS waiver does not constitute approval to purchase any product or deviate from any other Army regulation or policy
 - Examples of reasons products are not available through CHESS
 - No Army Golden Master (AGM) capability (requires NETCOM waiver)
 - Not Trade Agreements Act compliant (requires KO waiver)
 - Electronic Product Environmental Assessment Tool (EPEAT)
- Approval authority:
 - Individual orders: PD CHESS
 - "Blanket" exception for organization/activity: Army CIO/G-6
 - Collaboration tools: Army CIO/G-6

CHESS Applied Standards and Policy



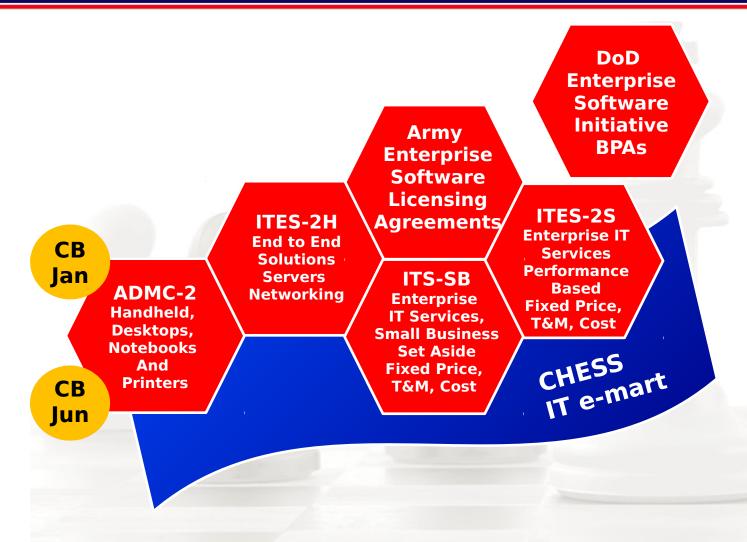
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Contract Requirement: Compliance with DoD, Army and NETCOM Standards

- NETCOM Army Enterprise Desktop Standardization
- Army Golden Master (AGM) (United States Government Configuration Baseline)
- Electronic Product Environmental Assessment Tool (EPEAT)
- DoD IT Standards Registry (DISR)
- Information Assurance (AR 25-2/OIA&C Approved Products List)
- Internet Protocol Version 6 (IPv6)
- Networthiness (AR 25-1 and TA 2004-005)
- Section 508 (§1194.26 U.S. Rehabilitation Act)
- Smart Card Reader (CAC) (NIST IR 6887)
- Trusted Platform Module (TPM v1.2)
- Wireless Networking (DoDD 8100.2 & AR 25-2)
- UID, RFID, NETCOM Technical Authority (TA), etc.
- Hardware Requirement for VISTA FIPS 140-2 Certified Mode in Support of 802.11 Wireless Connection
- Secure BIOS (NIST SP 800-147)

CHESS Contracts and Agreements







Army Desktop and Mobile Computing-2/ Consolidated Buy (ADMC-2/CB)



ADMC-2 Contract Overview

- Continuous competition on 8 Indefinite Delivery/Indefinite Quantity (ID/IQ)
 Contracts
- Contract Term: 10 years including options (expires APR 2016)
- Open to Army, DoD, and Federal agencies
- Program maximum: \$5B across all contracts for life of contracts
- Decentralized ordering
- No CHESS fee

ADMC-2 Contract Scope

- Purchase or lease of desktops, notebooks, ruggedized devices, printers, video teleconferencing (VTC) and their ancillary items
- Related services: installation, site survey, system configuration, integration, imaging, asset tagging and distribution
- Base contract for desktop and notebook Consolidated Buys (CBs)
- Includes technology refreshment, replacement and new technology provisions





Army Consolidated Buy (CB) Desktop and

- _{Obj}Natebook
 - Reduce Army costs and standardize IT enterprise
- **Considerations**
 - Cost, technical, OEM flexibility, schedule, O&M
 - NETCOM Army enterprise desktop standardization
- **Contracting Process**
 - NETCOM Army enterprise desktop standardization
 - Online Process IT e-mart
 - Customer compares technology, prices, support features
 - Decentralized ordering by customer's contracting activity
- **CHESS Advantages**
 - No CHESS fee
 - Already standards/policy compliant (ADMC)
 - Army Golden Master (AGM) load at factory
- **Exception Process**

"Up to 62% cost reduction during Mission critical, non-conforming specs and host country agreement ods

ADMC-2/CB





CB minimum standard configuration established for the following products:

Desktops

- Standard
- Performance
- All-in-One
- Work Station

Displays

- Small (19")
- Medium (22")
- Large (27")

Printers

- Black and White multi-function
- Color multi-function
- 110 and 220 VAC

Tablets/Slates

Notebooks

- Mainstream
- Rugged
- Lightweight
- Specialty

Options and Upgrades

- Memory Expansions
- Hard Drive Upgrades
- Added Hard Drives
- Trusted Drives
- Port Replicators (Notebooks)
- Carrying Case (Notebooks)
- Extra Battery (Notebooks)
- Warranty Upgrades (Notebooks)

ADMC-2/CB





	CB 1-8	CB9	CB10	CB11	CB12	CB13	CB14	
		Jun/Sep	Jan/Mar	Jun/Sep	Jan/Apr	Jun/Sep	Jan/Mar	Total
	2005- 2009	2009	2010	2010	2011	2011	2012	All CBs
Total Desktop Quantity	297,071	98,179	15,867	53,026	9,228	63,277	7,236	543,88 4
Total Notebook Quantity	301,146	107,936	19,258	87,282	10,677	118,298	9,324	653,92 1
Total Printer Quantity		-	•	•	189	715	138	1042
Total CB Sales (\$M) *	\$420.20	\$156.40	\$30.20	\$118.70	\$22.20	\$154.00	\$18.03	\$919.7 3
Discount from ADMC Pricing	3-53%	4-61%	0-53%	2-48%	0-57%	0-62%	0-56%	0-62%
	(ADMC- 1) and (ADMC- 2)	(ADMC- 2)	(ADMC- 2)	(ADMC- 2)	ADMC- 2)	(ADMC- 2)	(ADMC- 2)	
CB Cost Avoidance (\$M)	\$173.80	\$57.80	\$8.10	\$36.50	\$5.50	\$65.80	\$7.05	\$355

ADMC-2/CB





Consolidated Buy 14 (CB 14) Business Report

	Quantit	Contract			CB Price
Product Type	y	Price	CB Price	Actual Price	Discount
110 VAC BW	72	\$72,205.27	\$59,167.05	\$59,167.05	\$13,038.22
110 VAC Color MFP	66	\$259,188.62	\$206,332.88	\$211,509.23	\$52,855.74
19 IN DISPLAY	1988	\$321,426.42	\$268,661.30	\$266,003.56	\$52,765.12
22 IN DISPLAY	10260	\$2,075,314.5	\$1,629,673.9	\$1,674,200.4	\$445,640.60
		4	4	3	
27 IN DISPLAY	348	\$107,917.74	\$98,483.12	\$98,852.65	\$9,434.62
ALL-IN-ONE	17	\$16,732.42	\$14,264.00	\$14,264.00	\$2,468.42
LIGHTWEIGHT	653	\$916,435.63	\$644,280.36	\$723,676.99	\$272,155.27
NOTEBOOK					
MAINSTREAM	5922	\$7,676,955.7	\$5,069,077.0	\$6,367,450.0	\$2,607,878.7
NOTEBOOK		8	1	1	7
PERFORMANCE	4294	\$3,938,730.5	\$2,522,666.0	\$3,133,349.0	\$1,416,064.5
DESKTOP		9	6	0	3
RUGGEDIZED	290	\$897,351.66	\$649,951.70	\$551,251.93	\$247,399.96
NOTEBOOK					
SCIENTIFIC	310	\$492,282.74	\$387,443.65	\$569,892.74	\$104,839.09
WORKSTATION					
SPECIALTY	2459	\$2,734,401.4	\$1,989,734.8	\$2,704,558.0	\$744,666.66
NOTEBOOK		9	3	5	
STANDARD DESKTOP	2615	\$2,521,694.8	\$1,432,784.4	\$1,658,446.5	\$1,088,910.4
		6	1	5	5

CHESS Business Report



FY11 \$\$\$ Total Sales \$\$\$ \$4.5B

FY11 \$\$\$ Army Sales \$\$\$ \$3.5B

FY11 <<< Cost Avoidance >>> \$643M

Software \$320M Hardware/Services \$323M

Consolidated Buy

	CB9	CB10	CB11	CB12	CB13	CB14	
	Jun/Sep	Jan/Mar	Jun/Sep	Jan/Apr	Jun/Sep	Jan/Mar	Total
	2009	2010	2010	2011	2011	2012	All CBs
Total Desktop Quantity	98,179	15,867	53,026	9,228	63,277	7,236	246,81 3
	107,93 6	19,258	87,282	10,677	118,298	9,324	352,77 5
Total Printer Quantity	-	-	-	189	715	138	1042
Total CB Sales (\$M)	\$156.4 0	\$30.20	\$118.70	\$22.20	\$154.00	\$18.03	\$499.5 3
Discount from ADMC Pricing	4-61%	0-53%	2-48%	0-57%	0-62%	0-56%	0-62%
	(ADMC- 2)	(ADMC- 2)	(ADMC- 2)	(ADMC- 2)	(ADMC- 2)	(ADMC- 2)	
CB Cost Avoidance (\$M)	\$57.80	\$8.10	\$36.50	\$5.50	\$65.80	\$7.05	\$180.7 5



ITES-2H



ITES-2H Contract Overview

- Six (6) Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts
- Contract Life: 5 years including options plus 18.5 month extension (expires AUG 2013)
- Open to only Army requirements as of 09 FEB 2012
- Program Maximum: \$5.4B across all contracts for life of contracts (including all options)
- Decentralized ordering
- No CHESS fee

ITES-2H Contract Scope

- Purchase or lease of IT hardware solutions Includes servers, storage systems, work stations, thin clients, networking equipment, network cables, connectors and accessories, network printers/document processors, VTC products and related items
- Includes desktops and notebooks for the fielding of a complete system or part of total solution
- Related Fixed Price Services: system configuration and integration, site analysis, Currently Army Only installation and relocation provides:
 - Discounted Catalog Product and Warranty Areas I-IX
 - Unified Capabilities Approved Product List (UC APL) Items
 - Related services
- Includes Technology Refresh and New Technology Provisions

ITES 3-H Update



Information Technology Enterprise Solutions-Hardware (ITES-3H)

- Planned scope: state-of-the-art commercial IT equipment and related services, including installation, integration, etc. for worldwide support consisting of the following: servers; workstations, thin clients, desktops and notebooks; storage systems; networking equipment; network printers; cables, connectors and accessories; video equipment products; uninterruptible power supplies in support of fielding a complete system or as part of a total design solution.
- Anticipated vehicle: MAS IDIQ
- Anticipated awards: 8 (4 small business reserved)
- Anticipated award date: 3Q FY13
- Period of performance: 3 year base; 2 1-year options
- •NAICS: #334111 (Electronic Computer Manufacturing)



ITES-2S

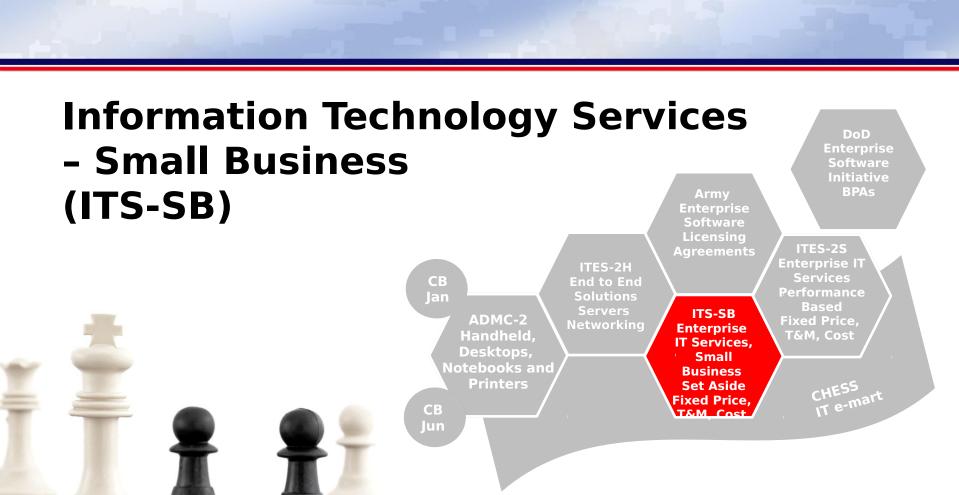


ITES-2S Contract Overview

- Sixteen (16) Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts
- Firm fixed price rates, time and material, cost
- Contract life: 9 years including options (expires APR 2015)
- Open to Army, DoD, and Federal agencies
- Program maximum: \$20B across all contracts for life of contracts (including options)
- Decentralized ordering
 - Required to use IT e-mart for TOR/RFP
- No CHESS fee

ITES-2S Contract Scope

- Support and enhance centralized operation and management as defined by CIO/G-6 and Network Enterprise Technology Command
- Support Army's portion of the Global Information Grid (GIG) and network-centric warfighting objectives
 - Army enterprise standardization
 - Army knowledge management
 - Active directory
 - Networthiness program
 - Internet Protocol Version 6
 - DoD information technology standards registry
 - Information assurance Army and DoD policies
 - DoD architecture framework



ITS-SB



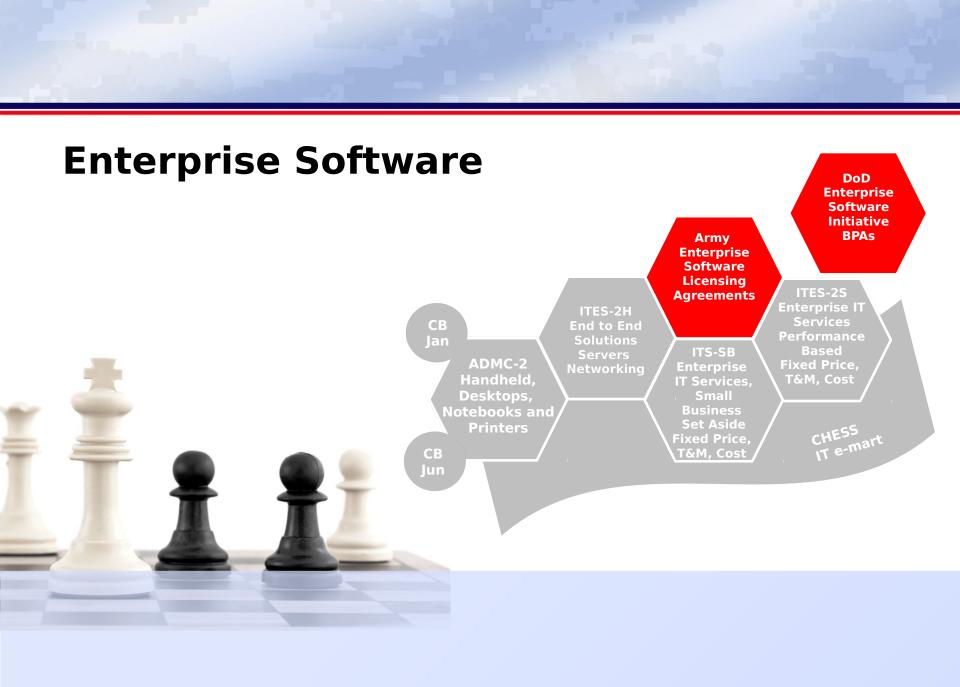
ITS-SB Contract Overview

- Fifteen (15) performance-based contracts, fixed labor rates, flexible pricing
- Firm fixed price, time and materials, cost plus
- Contract Life: 5 years including Options (Expires July 2016)
- Open to Army, DoD and Federal agencies
- Estimated dollar value: \$400M across all contracts for life of contracts (including options)
- Decentralized Ordering
- No CHESS Fee

ITS-SB Contract Scope

The ITS-SB contract scope encompasses a full range of innovative, world-class IT support services and solutions at a reasonable price. Contract line items (CLINs) cover the following services and contract types:

- IT solution services
- IT subject-matter expert
- IT functional area expert
- Incidental construction
- IT solution equipment
- IT solution software





Enterprise Software Initiative (ESI) established JUN 1998

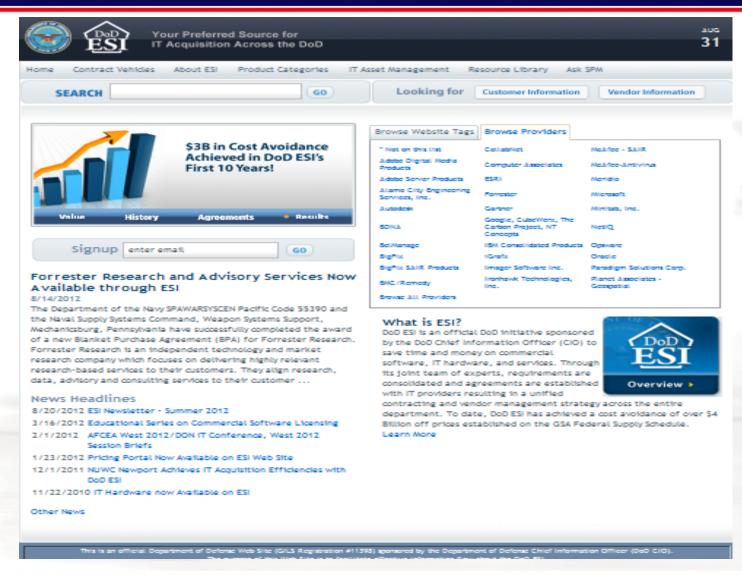
- Mission
 - Lower total cost of ownership across DoD, Coast Guard and Intelligence Community
 - Establish and manage enterprise commercial off-the-shelf (COTS) IT agreements, assets and policies
- Organization
 - Co-chaired by OASD/CIO staffer and DoD service rep (currently Navy)
 - DoD components appoint Software Product Manager (SPM) to:
 - Consolidate requirements and develop business case
 - Negotiate best-value deals
 - Administer resulting agreements
 - CHESS is the Army's SPM

Authority

- DFARS 208.7402
 - Fulfill requirements for COTS software in accordance with DoD ESI via PGI 208.7403
 - Follow ESI Order of Precedence
 - DoD Inventory
 - DoD Enterprise Software Agreement (ESA)
 - "Other means" but Army requires CHESS waiver
 - DoDI 5000.2, Encl. 5, para. 6: "maximum use and coordination with DoD ESI



DoD ESI Websit e





Product	Туре	Managed By	Special Conditions
Adobe (Desktop)	DoD ESI	Navy	
Adobe (Server)	DoD ESI	Navý	Collaborative Requires
			CIO/G-6 Approval
Alamo	DoD ESI	Army	
Autodesk Software	DoD ESI	Army	
BDNA	SmartBUY	Army	
Belmanage	SmartBUY	Army	
BigFix - Situational Awareness	SmartBUY	GSA	
Incident Response (SAIR)			
BMC Remedy	Army Agreement	Army	Army Inventory
Computer Associates Products	DoD ESI	Army	
Data At Rest - (DAR) Products	SmartBUY	Air Force	
Gartner	DoD ESI	Navy	
Google ESRI Geospatial Line of	SmartBUY	GSA	
Business - Products (ESRI/			
GeoRover / Google Tools,			
MapDotNet)			



Product	Туре	Managed By	Special Conditions
IBM Software - Products (IBM Rational, DB2, Tivoli, Websphere, Telelogic and Lotus Brands)	DoD ESI	Army	Army Inventory
iGrafx Office System	DoD ESI	Navy	
Ironhawk	DoD ESI	Army	
Meridio Point One	SmartBUY	GSA	
Microsoft Premier Support			
Microsoft Products and Software	DoD ESI	Navy	
Microsoft Products and SA - Army Consolidated Agreement	Army Agreement	Army	Army Only Agreement
Minitab Statistical Software	DoD ESI	Navy	
Minitab- Army Consolidated Agreement	Army Agreement	Army	
NetIQ	DoD ESI	Army	
Opsware Asset Management	DoD ESI	Army	
Oracle	SmartBUY	Army	Army SW Exchange
Paradigm	DoD ESI	Army	



Product	Туре	Managed By	Special Conditions
Planet Associates	SmartBUY		
Power Steering	SmartBUY	Navy	
Primavera Systems	SmartBUY	Army	
Quest Software	SmartBUY	Army	Army Centrally Funded Mail Migration Products
Red Hat Linux - Resellers (DLT Solutions, Carahsoft)	DoD ESI	DISA	
RWD Technologies	DoD ESI	Navy	
SAP (Includes Business Objects and Crystal Reports)	DoD ESI	Navy	
SAP Enterprise Licenses Agreement	Army Agreement	Army	ERP Licenses
SecureFusion	SmartBUY	Air Force	
Securify	DoD ESI	Air Force	
Sun Software	DoD ESI	DISA/Navy	



Product	Туре	Managed By	Special Conditions		
Sun Support	DoD ESI	DISA/Navy			
Sybase	DoD ESI	Army	Army Inventory		
Symantec Veritas - Army Consolidated Agreement	Army Agreement	Army	Army Inventory		
Telelogic	DoD ESI	Army			
Virtual	DoD ESI	Army			
VMware	SmartBUY	Army			
Webfiltering - Products (BlueCoat, Smartfilter) Army Consolidated Agreement	Army Agreement	Army			
Websense	DoD ESI	Army			
Xacta	SmartBUY	Air Force			
ARMY / DoD Funded Software					
Lotus Forms Viewer	Army Agreement	Army	Download Only		
Silanis ApproveIT		Army			



CHESS IT e-mart



IT e-mart Features:

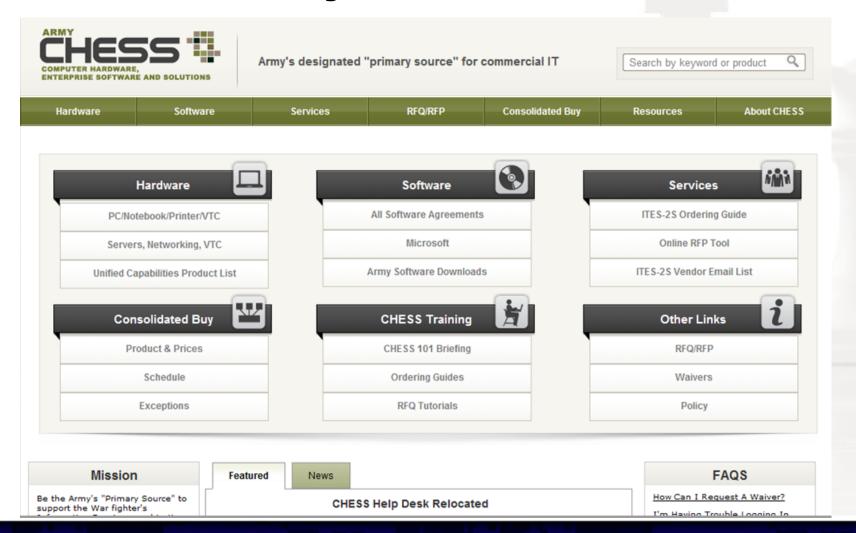
- Search, browse, and compare capability
- CHESS training section
- Order status
- Government employee purchase program
- No cost software/software exchange
- Contract information, modifications, and lists of products
- Policy page
- Microsoft policies and link to ordering
- Waiver process
- RFQ/RFP online
- Consolidated Buy comparison tool



CHESS IT e-mart

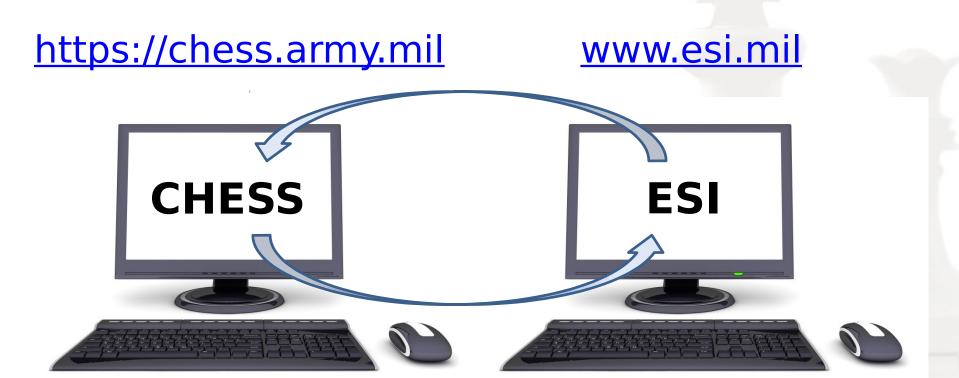


New CHESS Web Site Design



CHESS and ESI Web Sites





Contracting Officers' Frequently Asked Questions





Requesting Hardware and Services from CHESS Agreements



- From the CHESS home page click RFQ/RFP under RFQ/RFP Home Page: Provides all current RFPs and RFQs
- Create New Request: Three (3) choices available
 - Request a Quote for Hardware
 - Request a Proposal for Services
 - Software (software cannot be purchased through this process)
- If purchasing Hardware select Request a Quote, if purchasing Services select Request a Proposal
- The product/requirement determines the contract
- Once the requirement is determined/finalized, fill in the Request Details, the Contact and Shipping Information and upload any applicable documents (PWS, SOW, Specification, etc.)
- Then click submit

Requesting Hardware and Services from CHESS Agreements



What to expect after RFQ/RFP is released to vendors

- Automatic e-mail sent to vendors selected
 - 3-5 days to respond to a RFQ
 - 5-10 days to respond to a RFP
- If a shorter timeframe is required, request it within the RFQ/RFP
- The vendors will respond with an "e-mail" within the CHESS RFP/RFQ system
- RFPs can be amended within the CHESS system
- RFQs cannot be amended; If a mistake is made within an RFO it will need

to be canceled and reissued

An RFQ can be "requoted" within the websi



ID/IQ Orders and Fair Opportunity for Consolidated Buy



Actions by or for DoD exceeding \$3K, but not exceeding \$150K

- Subject to FAR 16.505
- No need to contact each awardee if KO has information available to ensure each is provided "fair opportunity" for the order (FAR 16.505(b)(1)(ii))
 - Cost or price must be a factor in the selection decision (FAR 16.505(b)(1)(ii)(E))
 - Other fair opportunity requirements at FAR 16.505(b)(1)(ii)(A) thru (D)
 - CB product specifications and prices are posted on the CHESS website for use in meeting this FAR 16.505(b)(1)(ii) requirement
- Reviewing the catalog pricing for orders up to \$150,000 is considered providing fair opportunity to CB contractors and a RFQ is unnecessary.
- No requirement to provide fair opportunity if an exception applies (FAR 16.505(b)(2)(i)(A) (D)):
 - A. Urgent need, B. Only one awardee capable, C. Logical follow on (if original order gave fair opportunity to all), D. Satisfy minimum guarantee
 - DFARS 216.505-70 Orders under multiple award contracts
 - The section of the DFARS only applies to orders for supplies or services exceeding \$150,000
 - AFARS 5116.505-90 -- Multiple Award Task Order (MATO) Contracts
- AFARS 5116.505-90(a) Requiring documentation and using procedures beyond those required by FAR Part 16.5 adds little or no value to the selection/placement of task orders under MATO contracts.

ID/IQ Orders and Fair Opportunity for Consolidated Buy



Actions by or for DoD exceeding \$150K but not exceeding \$5M

- Subject to FAR 16.505 and DFARS 216.505-70
- Fair opportunity requirements at FAR 16.505(b)(1)(iii) and DFARS 216.505-70(c)
 - Fair notice of intent to all contractors offering the supplies
 - Description of the supplies
 - Basis for award
 - Fair opportunity to submit an offer and have that offer fairly considered
 - Other fair opportunity requirements at FAR 16.505(b)(1)(ii)(A) thru (D)
- An RFQ must be issued to the vendors; through competition a price lower than the catalog price may be achieved.
- No requirement to provide fair opportunity if an exception applies (FAR 16.505(b)(2)(i)(A) thru (E)):
 - A. Urgent need, B. Only one awardee capable, C. Logical follow on (if original order gave fair opportunity to all), D. Satisfy minimum guarantee, E. Statute authorizes or requires
 - Also see FAR 16.505(b)(1)(v) and DFARS 216.505-70(d)
- AFARS 5116.505-90 -- Multiple Award Task Order (MATO) Contracts
 - AFARS 5116.505-90(a) Requiring documentation and using procedures beyond those required by FAR Part 16.5 adds little or no value to the selection/placement of task orders under MATO contracts.

> \$150K = Actions by or for DoD = < <u>\$5M</u>

ID/IQ Orders and Fair Opportunity for Consolidated Buy



Actions by or for DoD exceeding \$5M

- The following requirements apply in addition to the requirements at FAR 16.505 and DFARS 216.505-70 for actions exceeding \$5M
- IAW FAR 16.505(b)(1)(iv), fair opportunity also includes, as a minimum:
 - A notice of the order that includes a clear statement of the agency's requirements
 - A reasonable response period
 - Disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance
 - Where award is made on a best value basis, a written statement documenting the basis for award and the relative importance of quality and price or cost factors
 - An opportunity for a post-award debriefing in accordance with FAR 16.505(b)(4)
- An RFQ has to be issued to the vendors; through competition a price lower than the catalog price may be achieved.
- AFARS 5116.505-90 -- Multiple Award Task Order (MATO) Contracts
- AFARS 5116.505-90(a) Requiring documentation and using procedures beyond those required by FAR Part 16.5 adds little or no value to the selection/placement of task orders under MATO contracts

order under MATO contracts or for DoD = > \$5M

Requesting Software from CHESS/ESI Agreements



- Always check the inventory at the CHESS website and ESI.mil
- From the CHESS home page click on (All) Software Agreements under the Software Tab
- A list of all the CHESS and ESI agreements is provided
- Once the software that is needed is determined, review the synopsis that is provided for each. The synopsis will explain how the software agreement was competed and if a J&A is necessary
- Once the acquisition package is completed within the agency's policies and procedures, an RFQ will be e-mailed to all the vendor POCs listed for each agreement
- Depending on the agency's policies and procedures, it may be a requirement to post the RFQ on GSA E-Buy as well

Ordering From Software Blanket Purchase Agreements (BPAs)



- Subject to FAR 8.405-3(c)
- Single-Award BPA. FAR 8.405-3(c)(1) Any Order Value
 - If the ordering activity establishes a single-award BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises

Orders = < \$3K

Orders at or Below \$3,000.00

- Multiple-award BPAs FAR 8.405-3(c)(2)(i)
 - The ordering activity may place orders at or below \$3,000.00 with any BPA holder that can meet the agency needs

> \$3K = Orders = < \$150K Orders Exceeding the \$3,000.00 but not Exceeding \$150,000.00

- Multiple-award BPAs FAR 8.405-3(c)(2)(ii)
- No need to contact each awardee if KO has information available to ensure each is provided "fair opportunity" for the order (FAR 8.405-3(b)(2)(ii)(A) and (FAR 8.405-3(c)(2)(ii) (B)
- No requirement to provide fair opportunity if an exception applies (FAR 8.405-6(a)(1)(i)(A)-(C)
 - A. Urgent need, B. Only one awardee capable, C. Logical follow on (if original order gave fair opportunity to all)
- DFARS 208.405-70 only applies to orders over \$150,000.00
- AFARS does not speak to ordering procedures for BPAs

Ordering From Software Blanket Purchase Agreements (B



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Subject to FAR 8.4.405-3 (c)

Orders Exceeding \$150,000.00

- Multiple-award BPAs FAR 8.405-3(c)(2)(iii)
 - (A) The ordering activity shall place an order in accordance with paragraphs FAR 8.405-3 (c)(2)(iii)(A)(1)-(3)
 - (1) Provide an RFQ to all BPA holders offering the required supplies or services under the multiple-award BPAs, to include a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made;
 - (2) Afford all BPA holders responding to the RFQ an opportunity to submit a quote; and
 - (3) Fairly consider all responses received and make award in accordance with the selection procedures.

Ordering From Software Blanket Purchase Agreements (BPAs)



Subject to FAR 8.4.405-3 (c) Subject to DFARS 208.405-70

Additional ordering procedures over \$150,000.00

- DFARS 208.405-70(c) allows for an order to be placed on a competitive basis only if fair opportunity has been provided, including a description of the supplies to be delivered or the services to be performed and the basis upon which the contracting officer will make the selection. Additional requirements listed in DFARS 208.405-70(c), (1), (i)(A), (B), and (ii)
 - (1) Provide notice to as many schedule contractors as practicable to ensure offers will be received from at least three contractors;
 - (i)(A) Receive offers from at least three contractors that can fulfill the requirements; or
 - (B) Determine in writing that no additional contractors that can fulfill the requirements could be identified despite reasonable efforts to do so (documentation should clearly explain efforts made to obtain offers from at least three contractors); and
 - (ii) Ensure all offers received are fairly considered
- No requirement to provide fair opportunity if an exception applies (FAR 8.405-6(a)(1) (i)(A)-(C)
 - A. Urgent need, B. Only one awardee capable, C. Logical follow on (if original

CHESS IT e-Mart



Contact Us

Computer Hardware, Enterprise Solutions and Software (CHESS)

9351 Hall Road, Building 1456

Fort Belvoir, VA 22060-5526

CHESS Help Desk: 888-232-4405

Fax: 703-806-8232

https://chess.army.mil



Questions and Comments







AAE: Army Acquisition Executive

ACC-RI/NCR: Army Contracting Command-Rock Island/National Capital Region

ACOM: Army Command

ADMC: Army Desktop and Mobile Computing

AFARS: Army Federal Acquisition Regulation Supplement

AGM: Army Golden Master

AKO: Army Knowledge Online

APL: Approved Product List

AR: Army Regulation

ASA(ALT): Assistant Secretary of the Army (Acquisition, Logistics, and Technology)

AWCF: Army Working Capital Fund

BIOS: Basic Input/Output System

BPA: Blanket Purchase Agreement

C2: Command and Control Systems

CAC: Common Access Card

CAL: Client Across License

CB: Consolidated Buy

CHESS: Computer Hardware Enterprise Software and Solutions

CIO/G-6: Office of Chief Information Officer/G-6

CIO: Chief Information Officer



CLIN: Contract Line Items

COTS: Commercial off-the-shelf **CPU:** Central Processing Unit

DA: Department of Army

DAR: Data at Rest

DFARS: Defense Federal Acquisition Regulation Supplement

DISR: DOD IT Standards Registry

DoD: Department of Defense

DoDD: Department of Defense Directive **DoDI:** Department of Defense Inventory

EPEAT: Electronic Product Environmental Assessment Tool

EPIC: Enhanced Programmable ircll Client

EMC: Electromagnetic Compatibility **ESA:** Enterprise Software Agreement **ESD:** Engineering Systems Division **ESI:** Enterprise Software Initiative **EULA:** End User License Agreement

FAQ: Frequently Asked Question

FAR: Federal Acquisition Regulation

FIPS: Federal Information Processing Standard

FOB: Free on Board

FSS: Federal Supply Schedule



FY: Fiscal Year

GIG: Global Information Grid

GSA: General Services Administration

HCA: Head of Contracting Agency or Activity **HQDA:** Headquarters, Department of Army

HP: Hewlett Packard

HUP: Home Use Program **IAW:** In Accordance With

IBM: International Business Machines

ID/IQ: Indefinite Delivery/Indefinite Quantity

IPT: Integrated Product Team

IPV6: Internet Protocol Version 6

IR: Interagency Report

ISEC: Information Systems Engineering Command ITAM: Information Technology Asset Management IT e-mart: Singly Entry Point for CHESS Website

IT: Information Technology

ITES: Information Technology Enterprise Solutions (2H: Hardware; 2S: Services)

ITS-SB: Information Technology Services - Small Business

IV&V: Independent Verification and Validation

J&A: Justification and Approval

KO: Contracting Officer



MAS: Multiple Award Schedule

MATO: Multiple Award Task Order

MFP: Material Fielding Plan

MOSS: Microsoft Office SharePoint Server

MOM: Microsoft Operations Manager

NAICS: North American Industry Classification System

NEC: National Executive Committee

NETCOM: Network Enterprise Technology Command

NETOPS: Network Operations

NIST IR: National Institute of Standards & Technology

NIST SP: National Institute of Standards & Technology Special Publication

NSS: National Security Systems

OASD: Office of the Assistant Secretary of Defense

OCONUS: Outside of Contiguous United State

OEM: Original Equipment Manufacturer

OIA&C: Office of Information Assurance & Compliance

OS: Operating System **PC:** Personal Computer

PEO EIS: Program Executive Office Enterprise Information Systems

PKI: Public Key Infrastructure



PO: Program Office

POCs: Points of Contact

PM P2E: Power Projection Enablers

PWS: Performance Work Statement

RFID: Response Frequency Identification

RFP: Request for Proposal

RFQ: Request for Quote

RISC: Reduced Instructing Set Computing

SA: Secretary of the Army

SAP: Special Access Program

SCOM: System Center Operations Manager

SCCM: System Center Configuration Manager

SGI: Silicon Graphics Inc.

SOW: Statement of Work

SP: Special Publication

SPM: Software Product Manager

SQL: Structured Query Language

SMS: Short Message Service

SLMS: Software Licensing Management System



T&M: Time and Materials

TA: Technical Authority

TAM: Technical Account Manager

TC: Type Classification

TCO: Termination Contracting Officer

TO: Technical Order

TOR: Task Order Request

TPM: Trusted Platform Module

UC: Unified Capabilities

UC APL: Unified Capabilities Approved Products List

UID: Unique Identification

UPS: Uniform Procurement System

VAC: Volts Alternating Current

VTC: Video Conferencing

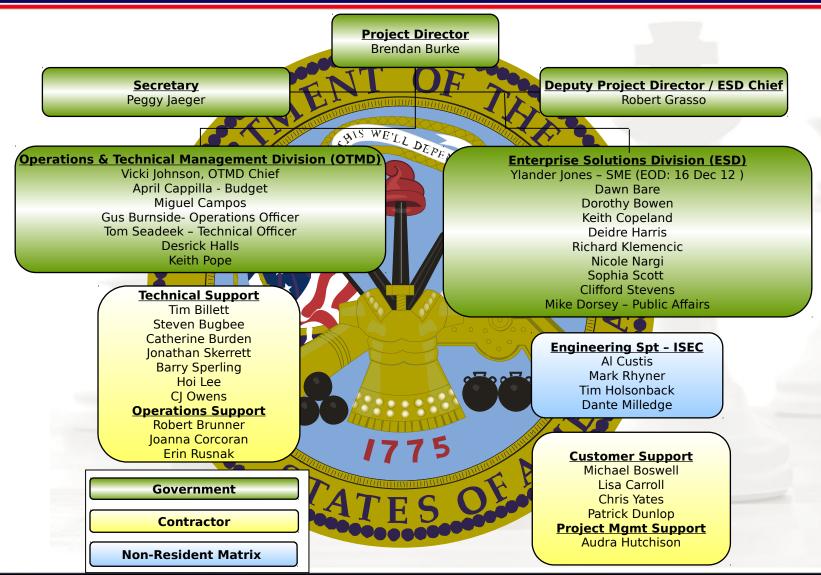




UNCLASSIFIED

CHESS Organizational Structure





Program Description



Mission Statement:

Be the Army's primary source to support the warfighter's information dominance objectives by developing, implementing and managing commercial Information technology contracts that provide enterprise-wide net-centric hardware, software and services

Characteristics / Description:

- Army Desktop and Mobile Computing (ADMC), Information Technology Enterprise Solutions (ITES) and Information Technology Services – Small Business (ITS-SB) provide commercial IT Hardware & Services
- Enterprise Software Initiative (ESI) agreements generate cost savings and provide asset visibility across the DoD
- Online ordering through CHESS's IT e-mart streamlines the IT procurement process

Added Value:

CHESS business processes provide:

- ITES, ADMC, and ESI enterprise level agreements at significant volume level discounts
- Compliance with DoD and HQDA policies on standardization and interoperability
- GNEC enabled systems & migration strategies in accordance with common operating environment architecture

Special Features:

- Consolidated Buy: Notebooks and Desktops offered twice per year at rates up to 62% off ADMC-2 contract prices. ADMC-2 contract prices are discounted 7% off of respective GSA prices.
- ESI: Uses Stock Fund dollars with an approved business case study to fund enterprise volume requirements
- IT e-mart: establishes IT e-commerce procurement process through AKO channel

Army COTS IT Regulation



Everything you need to know about Army commercial off-theshelf

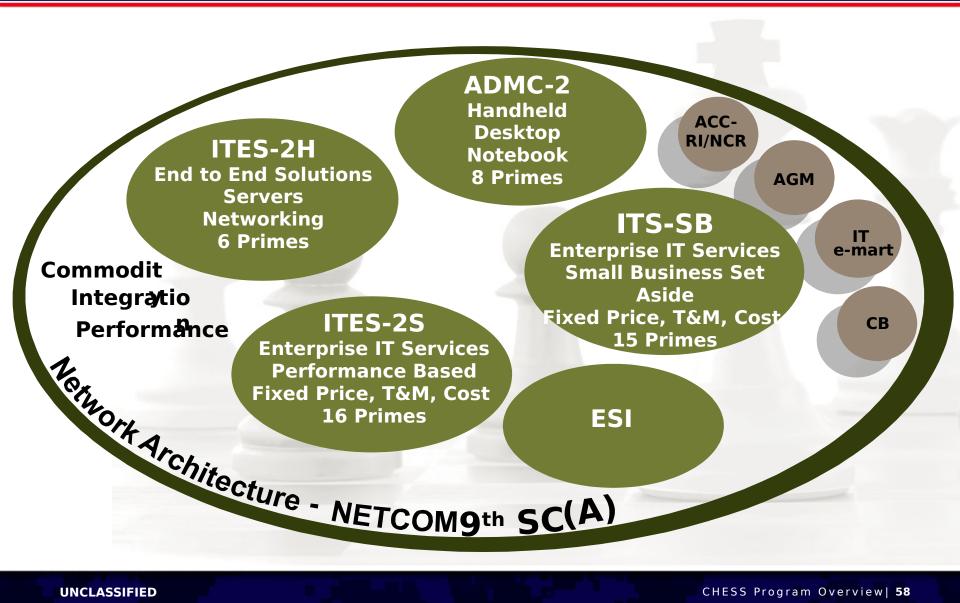
(COTS) Information Technology (IT)

- Buying COTS hardware?
 - Use CHESS!*
- Buying COTS software?
 - Use CHESS!*
- Buying COTS services?
 - Follow FAR Part 19 or use CHESS ITES-2S!

* Or get a waiver

CHESS Operational Concept





ADMC-2/CB



ADMC Products

- Desktops
- Notebooks
- Tablets/Slates
- All-In-Ones
- Personal digital assistants
- Semi-rugged and rugged devices
- **Printers**
- Scanners
- Digital cameras
- Power supplies
- External storage
- Transit cases
- Displays:
 - Plasma
 - Digital light processing
 - Liquid crystal display
 - High definition television
- Video teleconferencing
- Related accessories and upgrades

ADMC Limited Supplies

ADMC-2/CB



Contract Holders

- W910UZ-06-D-0001 === Telos
- W91QUZ-06-D-0002 === Dell
- W91QUZ-06-D-0003 === CDW-G
- W91QUZ-06-D-0004 === Hewlett Packard
- W91QUZ-06-D-0005 === ITG
- W91QUZ-06-D-0006 === Transource
- W91QUZ-06-D-0007 === Emtec Federal
- W91QUZ-06-D-0009 === NCS

Original Equipment Manufacturers (OEMs)

 Ace, Acer, Apple, Compaq, Dell, Fujitsu, Getac, Itronix, Lenovo, NCS, Panasonic, Transource, Criticom, Polycom, Tandberg, Wyse, Clearcube, Canon, Epson, Lexmark, Xerox, Samsung

ADMC-2 Limited Services



- Installation
- System Configuration
- Asset Tracking
- Asset Tagging
 - Unique Identification (UID)
 - Response Frequency ID

- Extended warranty
- Site survey
- Imaging

ADMC/CB



ADMC Delivery - from date order is received by the contractor

- Continental United States 30 days
- Outside the continental United States 35 days
- Alternate, expedited or additional delivery terms as negotiated at the delivery order level
- Partial shipments allowed unless otherwise specified
- Free On Board destination
- Non-Consolidated Buy prices do not include overseas continental U.S. shipping charges

Consolidated Buy (CB) Process



- CB conducted twice each fiscal year
- CHESS/TIC/NETCOM determine CB specifications
- ACC-RI negotiates with ADMC-2 contractors for special discount pricing during the designated CB period
- Products and prices are posted on CHESS website
- Customers determine their desktop and notebook requirements
- Customers provide requirements and funds to contracting POC
- Contracting officer makes award determination and issues a delivery order to the successful contractor or customer uses credit card on IT e-mart to make purchase

ADMC-2/CR

(1)FH PCIx16

(e.g., 3 PCI-E half

length (2



PCIe x16; x1 free,2 PCI (wired x4) x16; 1 half

(All Free) height PCIe

free, All LP

ADIVIC-Z/CD									
CHESS IT e-mart: Consolidated Buy (CB) Downloadable Spreadsheet									
Standard Desktop	Selection #1	Selection #2	Selection #3	Selection #4	Selection #5	Selection #6	Selection #7	Selection #8	
Vendor Name	Hewlett Packard	Emtec Federal		ITG	Telos	Transource	CDW-G	Dell	
Contract Number	W91QUZ-06- D-0004	W91QUZ-06- D-0007	W91QUZ-06-D- 0009	W91QUZ-06- D-0005	W91QUZ- 06-D-0001	W91QUZ-06- D-0006	W91QUZ- 06-D-0003	W91QUZ- 06-D-0002	
SELECT CONUS, OCONUS or Remote OCONUS	CLIN 1216AA	CLIN 1216AA	CLIN 1216AA	CLIN 1216AA	CLIN 1216AA	CLIN 1216AA	CLIN 1216AA	CLIN 1216AA	
Base Price	\$465.00	\$577.00	\$670.00	\$505.00	\$575.79	\$570.00	\$612.70	\$507.00	
Base Price With Selected Options	\$465.00	\$577.00	\$670.00	\$505.00	\$575.79	\$570.00	\$612.70	\$507.00	
Number /Price of Options Selected	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Manufacturer	Hewlett Packard	Lenovo	NCS	Hewlett Packard	Dell	Transource	Dell	Dell	
Model Number	HP Compaq 6005 Pro Business PC Microtower	ThinkCentre M82	FOUR4 DT- A391	HP Compaq 6200 Pro Small Form Factor	Optiplex 790 SFF	MIR-800HS	Optiplex 990 SFF	Optiplex 790 Small Form Factor	
Case/Motherboard Form Factor	Microtower	Small Form Factor	Desktop	Small Form Factor	790 Small Form Factor	Small Form Factor	Small Form Factor	790 Small Form Factor	
Overall	14.85x6.95x.1	13.3" W X	12.7" x 3.5" x	13.3" x 14.9"	11.42 x	12.75" x	11.42" x	11.42 x	
Dimensions (L x W x D)	6.96	14.5" D X 3.9" H	12.8"	x 4.0"	3.65 x 12.28	3.9" x 17"	3.65" x 12.28"	3.65 x 12.28	
Available	(1)3.5"		(1) 5.25" Ext,	(1) 3.5" Ext	1 internal	2x3.5 Int 1	1 External	1 internal	
Expansion Bays	(2)5.25"		(1) 3.5" Ext	Bay;	3.5", 1	free,1x3.5ex		3.5", 1	
(e.g., 2 Internal 5-			Slim (1 free),		external 5.25"	froe 1vF 2F	Internal	external 5.25"	
¼ (1 free))			(1) 3.5" Int, (1) 2.5" Int (1 free)		slimline	free,1x5.25 ext 0 free	3.5" (None Free)	slimline	
Available	(1)FH PCI,	2 PCle (x1,	(1) LP PCI-E	(1) PCI, (2)	1 half		1 PCle x16,	1 half	
Card Slots	(2)FH PCIx1,	x16)	x16 (1 free),	PCle x 1; (1)	height	free,1 PCI-e	1 PCle x16	height PCle	

PCle x 16

1 half

2 PCI 32-bit (1) LP PCI-E x4 All low-profile (1 free), (2) LP

ADMC-2/CB



CB15 Discounts - Standard and Performance Desktops

STANDARD DES	KTOP						
Vendor	CDW-G	EMTEC	TELOS	DELL			
	W91QUZ-06-D-	W91QUZ-06-D-	W91QUZ-06-D-	W91QUZ-06-D-			
Contract	0003	0007	0001	0002			
Manufacturer	Dell	Lenovo	Dell	Dell			
	Optiplex 990	ThinkCentre	Optiplex 790	Optiplex 790			
Model	SFF	M81	SEF	SFF			
CONUS CLIN	1216AA	1216 AA	1216AA	1216 AA			
CONUS ADMC-2							
Price	\$1,466.10	\$693.50	\$828.42	\$802.32			
CONUS CB	58% Cos	st 15% Cos	t 30% Cos	st 37% Co			
Personal Control of the Property of Saving State of Saving Sta							
Vendor	CDW-G	EMTEC	TELOS	DELL			
	W91QUZ-06-D-	W91QUZ-06-D-	W91QUZ-06-D-	W91QUZ-06-D			
Contract	0003	0007	0001	0002			
Manufacturer	Dell	Lenovo	Dell	Dell			
	Optiplex 990	ThinkCentre	Optiplex 790	Optiplex 790			
Model /	SFF	M81	SFF	STF			
CONUS CLIN	1217AA	1217 AA	1217AA	1217AA			
CONUS ADMC-2							
Price	\$1,550-52	\$776.47	\$853.39	\$867.61			
CONUS CB Price	\$678.70	\$677.00	\$638.95	\$577.00			

Information Technology Enterprise Solutions - 2 Hardware (ITES-2H)



Contract Holders

- W91QUZ-07-D-0006 === Dell
- W91QUZ-07-D-0007 === IBM
- W91QUZ-07-D-0008 === GTSI
- W91QUZ-07-D-0009 === CDW-G
- W91QUZ-07-D-0010 === Iron Bow
- W91QUZ-07-D-0011 === World Wide Technology

Original Equipment Manufacturers (OEMs)

 SGI, Cisco, Dell, EMC, IBM, Network Appliance Sun, Panasonic, Gateway, Foundry, HP, MPC, EMC, Quantum, Clearcube, Sun, Hitachi, Samsung, Core Data, Wyse

ITES-2H



ITES-2H Catalog Areas

- Hardware, Related Ancillaries and Warranties
- Servers RISC/EPIC
- Servers Windows based
- Clients Workstations, Thin clients, Desktops
- Storage Systems
- Networking Equipment
- Network Printers
- Cables, Connectors, Cabinets
- Video Equipment Products
- Uninterrupted Power Supplies

ITES-2H Non-Catalog Areas



- Related items
 - Related IT hardware and software
 - Unified Capabilities Approved Products List (UC APL) Items
- Related Services and Costs
 - Services related directly to the ITES-2H equipment requirement
 - Include, but are not limited to the following:
 - System Configuration and Integration
 - Physical Site Analysis
 - Installation and Relocation
 - High Availability Configuration
 - Legacy Equipment Warranty/Maintenance
 - OCONUS Shipping
- Related Items and costs negotiated at the ordering level

ITES-2H



ITES-2H Program Competition (Major OEM Product Lines With 2 or More Providers)

RISC/EPIC Servers

- SUN
- HP
- IBM

Windows-based Servers

- Dell
- HP
- IBM

Workstations/PCs/TCs

- Clearcube
- Dell
- HP
- IBM
- Neoware
- Sun

Storage

- FMC
- HP
- IBM
- Dell
- Sun
- NetApp
- Hitachi

Networking

- Cisco
- Foundry
- D-Link
- 3Com
- Enterasys
- HP
- Allied Telesys

Network Printers

- HP
- Xerox
- Lexmark
- Samsung

Video Teleconferencing

- Polycom
- Epson
- Samsung

Uninterruptible Power Supplies (UPS)

ITES-2H OEM Competition



	IRON BOW	CDWG	DELL	GTSI	IBM	WWT
3Com			X	X		
Allied Telesys	X			Х		Х
Cisco	Х	Х		Х	Х	Х
Clearcube		Х		Х		
Dell	X		X			X
D-link			X			X
EMC	X	X	X	X		X
Enterasys		X		X		
Epson	X			X		X
Foundry	X	X	X	X	X	X
Hitachi				X		X
HP	X	X		X		X
IBM	X	X		X	X	
Lexmark	X	X	X	X	X	
NetApp	X			X	X	
Polycom	X	X	X	X	X	X
Samsung	X	X		X	X	X
Sun	X	Х		X		Х

Information Technology Enterprise Solutions - 2 Services (ITES-2S)



Contract Holders

- W91QUZ-07-D-0001 === Harris IT Services
- W91QUZ-07-D-0002 === Pragmatics, Inc.
- W91QUZ-07-D-0003 === BAE Systems Information Technology
- W91QUZ-07-D-0004 === NCI Information Systems
- W91QUZ-07-D-0005 === Northrop Grumman
- W91QUZ-07-D-0010 === IBM
- W91QUZ-06-D-0011 === DELL Services Federal Government, Inc.
- W91QUZ-06-D-0012 === General Dynamics
- W91QUZ-06-D-0013 === HP Enterprise Services
- W91QUZ-06-D-0014 === Apptis, Inc.
- W91QUZ-06-D-0015 === STG, Inc.
- W91QUZ-06-D-0016 === Science Applications International Corporation
- W91QUZ-06-D-0017 === Lockheed Martin
- W91QUZ-06-D-0018 === CSC
- W91QUZ-06-D-0019 === Booz Allen Hamilton, Inc.
- W91QUZ-06-D-0020 === CACI ISS, Inc.

ITES-2S



ITES-2S Contract Task Areas

Business Process Reengineering

- Business case analysis
- Gap analysis
- Risk management

Information Systems Security

- Computer security incident response
- Information Assurance
- Disaster recovery
- Continuity of operation
- Contingency planning
- Systems certification and accreditation (DITSCAP)
- Security architecture design

Information Technology Services

- Biometrics
- Configuration management
- Video teleconferencing
- Performance benchmarking

Enterprise Design, Integration, and Consolidation

- Information and knowledge engineering
- Market research and prototyping
- Integrated solutions management

Network Support

- Network and telecommunications infrastructure support
- Office automation support
- Seat management/asset management

Systems Operation and Maintenance

- Help desk support
- Computer center tech support
- Legacy systems maintenance

Program/Project Management

- IT policy and planning
- Change management
- IT strategic planning

ITES 2-S and ITS-SB



TOR Submission via IT e-Mart

- All TORs shall be submitted via IT e-mart Request for Proposal (RFP) function
- TOR should include:
 - Transmittal letter identifying the TO strategy
 - Contract type
 - Proposal receipt date and time
 - Estimated contract start date/period of performance
 - Performance Work Statement
 - Name of incumbent contractor (if appropriate)
 - Instructions for submission of a technical and cost/price proposal
 - Selection criteria/basis for award
 - Any special requirements (i.e., security clearances, travel, special knowledge)
 - All other information deemed appropriate for the respective order

Information Technology Services - Small Business (ITS-SB)



Contract Holders

- W91QUZ-11-D-0001 === ActioNet
- W91QUZ-11-D-0002 === Creative Computing Solutions, Inc.
- W91QUZ-11-D-0003 === Engineering Services Network, Inc.
- W91QUZ-11-D-0004 === Enterprise Information Services, Inc.
- W91QUZ-11-D-0005 === Exeter Information Services, LLC.
- W91QUZ-11-D-0006 === Future Research Corporation
- W91QUZ-11-D-0007 === Information Innovators, Inc.
- W91QUZ-11-D-0008 === Link Solutions, Inc
- W91QUZ-11-D-0009 === M-Cubed Information Systems
- W91QUZ-11-D-0010 === MicroTechnologies, LLC.
- W91QUZ-11-D-0011 === NetCentrics Corporation
- W91QUZ-11-D-0013 === SNVC, L.C.
- W91QUZ-11-D-0014 === Superlative Technologies, Inc.
- W91QUZ-11-D-0015 === T4, LLC.
- W91QUZ-11-D-0021 === Tantus-OnPoint ATO Systems Support

ITS-SB



ITS-SB Contract Task Areas

Electronic Product Environmental Assessment Tool

- Site surveys
- Analysis/planning for energy use Mitigation/reduction recycling end-of-life products

Information Assurance

- Biometrics
- CAC/PKI
- Continuity of operation
- Contingency planning
- Disaster recovery
- Remote monitoring/intrusion detection
- Certification and accreditation (DIACAP)
- Secure video teleconferencing
- Security architecture design

Independent Protocol Version 6

- Site surveys
- Analysis/planning
- Assessment migration services
- Network infrastructure development
- Traffic engineering analysis
- Integrated solutions management

Independent Verification and Validation (IV&V)

- IV&V plan development
- Analysis/assessment
- Review functional requirements
- Test plan development
- Software/ program certification

Migration/Integration IT Services

- Analysis/planning
- Education/training
- Installation and integration of systems
- Middleware
- Site surveys
- Wireless network management

Warranty and Maintenance

- Computer center technical support
- Computer systems administration
- Help desk support
- Legacy systems maintenance
- Licensing support
- Network management

Software Background



- \$6B annual DoD spend on commercial off-the-shelf (COTS) software (2010 Federal Strategic Sourcing Initiative data)
- Influencing Factors:
 - Clinger Cohen Act 1996 federal law to improve IT management
 - Reform and improve the way Federal agencies acquire and manage IT
 - Required agency Chief Information Officer (CIO)
 - Encouraged procurement of COTS technology
 - National Security Systems generally exempt from architecture requirements, but not fiscal and CIO responsibilities
 - Federal Acquisition Regulation (FAR) Part 10: Federal agencies must use
 COTS item when available to meet requirements
 - Army FAR Supplement (AFARS): Requirement statements must reflect any available commercial solutions
- CHESS is the "mandatory source" for COTS IT and the Army's Software Product Manager (SPM)

DoD Enterprise Software Initiative Authority

COMPUTER HARDWARE, ENTERPRISE SOFTWARE AND SOLUTIONS

UNCLASSIFIED

- Authority: DoD Enterprise Software Initiative (DFARS 208.7402)
 - Procure COTS Software IAW DoD ESI
 - ESI Order of Precedence
 - DoD Inventory
 - DoD ESA
 - Other Means
 - Designate Agency SPM
 - CHESS designated Army SPM 02 Dec 02
 - CIO/G-6 and Army Acquisition Executive designated PEO EIS Army oversight of ESI and AWCF (2003)
 - Ensure utilization of DoD inventory
 - Establish ESAs as requirements identified/validated
 - Adjust terms and conditions within scope of ESA
 - Issue waivers from ESI requirements IAW AR 25-1 and DA IT Purchasing Guide (Sep 06)
 - Manage AWCF funds for borrowing

GSA SmartBUY



- Government-wide Enterprise Software Initiative (ESI) managed by OMB (Office of Management and Budget)
 - To leverage the Federal Government's buying power to achieve lower software licensing costs and equal or better "Terms and Conditions"
 - Interagency team led by GSA
- Authority
 - Clinger Cohen Act of 1996
 - DoD SmartBUY Policy 22 DEC 2005
 - Acquire COTS software through existing ESI or SmartBUY
 - Always consult with ESI team prior to negotiating large requirements
 - Permit conversion of new agreements to SmartBUY within 12 months

Software Working Groups/IPTs



- DoD Information Technology Asset Management (ITAM) Integrated Product Team (IPT)
- Enterprise Software Initiative (ESI) working group
- ESI Software Product Manager (SPM) working group
- Joint Microsoft ELA working group
- Oracle SmartBUY weekly review
- Oracle Net-Centric tiger team
- Cisco Smartnet ESA working group

Spectrum and E-Health/Computer Associates - Army ELA



- Awarded an Army Enterprise License Agreement (ELA) as an order against Enterprise Software Initiative (ESI) Blanket Purchase Agreement (BPA) #W91QUZ-04-A-0002 with Computer Associates
- ELA covers all Army activities and their support contractors
- Inventory includes Spectrum and E-Health software licenses
- Inventory managed by Power Projection Enablers (PM P2E)
- Ordering instructions posted to CHESS web site
 - Ordering is decentralized; users contact PM P2E for pricing and ordering information
 - Support Contractors are required to obtain letter from their Contracting Office authorizing use of ESI Agreement

BMC Remedy/Four Points Technology - Army ELA



- The Army awarded an Enterprise License Agreement (ELA) as an order against Enterprise Software Initiative (ESI) Blanket Purchase Agreement (BPA) #W91QUZ-07-A-0006 with Four Points Technology
- ELA covers all Army activities and their support contractors
- Inventory includes BMC Remedy software licenses
- Managed by PM Power Project Enablers (P2E)
- Ordering instructions posted to CHESS web site
 - Ordering is decentralized; users contact PM P2E for pricing and ordering information
 - Support Contractors are required to obtain letter from their Contracting Office authorizing use of ESI Agreement

Symantec/Veritas



- Awarded an Enterprise License Agreement (ELA) as an order against Enterprise Software Initiative (ESI) Blanket Purchase Agreement (BPA) D.O. D012 with Carahsoft Technology Corporation
- Covers the Army (Active, Civilians, Reserves, National Guard, Contractors in direct support of Army programs, and Army Assets within programs where the Army is the executive agent)
- Includes:
 - Maintenance of NetBackup, NetBackup Puredisk, BackupExec, Storage Foundation HA/DR, VERITAS Cluster Server, and VERITAS Volume Replicator
 - Essential Support (24x7 helpdesk)
 - Global named Technical Account Manager (TAM)
 - Three Full-time Consultants
 - Training, and other benefits (managed by CIO/G6 IRI)
- Ordering instructions posted to CHESS web site
- Maintenance will be assessed based on ACOM proportionate value of licenses in the portal
- Agreement expires 31 MAR 2012

Data Compression



- Awarded a DoD Enterprise Software Initiative (ESI) Blanket Purchase Agreement (BPA) #W91QUZ-11-A-0003 and #W91QUZ-11-A-0004
- Covers the Department of Defense (DoD)
- Includes:
 - New software license procurement and maintenance of SmartSync DCS Platform and Digital Media Bridge Software products
- Ordering instructions posted to CHESS web site
 - DoD users to provide Fair Opportunity between Alamo City Engineering Services and Ironhawk Technology BPAs
 - Ordering is decentralized; users contact BPA vendors directly with Requests for Proposal (RFP) and evaluation criteria
 - Limited Source Justification required for Brand Name Product requirement
 - Software Integrators are required to obtain letter from their Contracting Office authorizing use of BPA

Microsoft Enterprise License Agreement (MS ELA)



- Consolidation of Army Microsoft licenses under one Blanket Purchase Agreement (BPA)
- BPA awarded 30 JUN 2009 to Softmart Government Services
- \$80M annual agreement with 28-month base period, 3 one-year options
- The agreement applies to:
 - The Army: Active, National Guard, Reserves, Corps of Engineers, MEDCOM, Army assets within programs where the Army is the executive agent, civilians, and contractors in direct support of Army programs
- Centrally funded core (formerly "no count") products ended 31 OCT 2011
- Decentralized ordering for all Microsoft products through Software
 Licensing Management System (SLMS) at PD CHESS: https://chess.army.mil
- MS Office versions beyond Office 2007 require waiver from CIO/G-6
- Media available from local Network Enterprise Center (NEC)



MS ELA - 2



Core products (formerly "No Count") Software Assurance (SA) are centrally funded for option year 1 up to ACOM baselines. Requirements above ACOM baselines require additional purchase and include SA through 31 OCT 2014.

- Desktop Pro (OS and Core CAL only)
- Exchange Server Enterprise
- Windows Server (Standard/Enterprise)
- Project Professional
- Visio Professional
- SQL Server (Standard/Enterprise)
- MOSS (SharePoint Portal Server)
- SCCM (SMS)
- SCOM (MOM)

MS ELA - 2 Points of Contact



SUBJECT:	POINT OF CONTACT:	CONTACT INFORMATION:
MS ELA Contract	Ms. Lynne Caroe Division Chief, CXO ESD	COM: 703-545-1486 Email: linda.a.caroe.civ@mail.mil
MS ELA Ordering Questions	Ms. Dawn Bare Product Leader, PD CHESS	COM: 703-806-8231/DSN 656- 8231 Email: dawn.m.bare2.civ@mail.mil
MS Premier Support	Mr. Richard Warner Sr. Project Manager, CXO ESD	COM: 703-545-1827 Email: richard.d.warner22.civ@mail.mil
Benefits and Incentives	Ms. Katrina Tuel, CTR Sr. Project Manager, CIO/G-6 CXO ESD	COM: 703-545-1673 Email: katrina.w.tuel.ctr@mail.mil
MS Technical Account Manager	Mr. Dhruva Adams, CTR Sr. Technical Account Manager, Microsoft Premier Support	COM: 703-626-6576/mobile Email: dhruva.adams@us.army.mil
MS ELA Contracting Officer	Ms. Kim Ziegler Contracting Officer, ACC-NCR	COM: 703-428-0340 Email: kimberly.rziegler.civ@mail.mil

Home Use Program (HUP)



- Is NO longer open to active military and Government civilians
- Due to the expiration of the Army Microsoft Enterprise License Agreement on 30 MAY 2009, purchasers are required to discontinue their use of the Microsoft Home Use Program (HUP) software and de-install it from their home computers as of that date

Licensing Considerations



- Requiring activity technical team may understand technology but not licensing
 - May not always have an Enterprise perspective
 - Use the following before selecting your software:
 - Consulting groups
 - License experts (SPM)
 - Network with other services and agencies
 - Software attorney



License Terms and Conditions



- COTS software procurement generally involves multiple, and often conflicting, sets of Terms and Conditions (Ts & Cs)
 - GSA schedule forms base for orders
 - ESI/SmartBUY agreement based on GSA schedule but with negotiated Ts & Cs
 - Every software publisher has unique End User License Agreement (EULA)
 - Vendor (may be publisher's reseller) proposal may add additional Ts & Cs
- DoD ESI license agreements resolve conflicts among Ts & Cs
- Especially when buying outside ESI, check EULA
 - Check for provisions that conflict with Federal procurement laws
 - Check to ensure rights are clearly defined, quantifiable, predictable
- Examples of EULA "pitfalls":

Limitation of vendor liability Indemnification

Automatic renewal Control of litigation

Advance payment for services Payment of taxes

Exorbitant late payment fee Governing law



- License type
 - Identify how the product is licensed (named user, concurrent user, device, CPU, etc.)
 - Specify if ownership is "perpetual" versus "term"
- Use rights
 - Identify the entities that are permitted to use the software
 - Fully define terms such as: Enterprise, program, affiliate and subsidiary
 - Check for additional rights such as laptop and home use
 - Check for unusual license metrics such as use charges tied to virtual machines or remote access
 - Check for specific license restrictions such as to hardware make/model or geographic location



- Contractor use
 - Outsourcing may permit the outsourced Contractor to purchase and use software in support of the Government customer.
 Specify who owns the licenses; Government or contractor
 - Be sure that third parties (contractors) have use rights when working on behalf of the Government, or when providing services to host Government owned licenses
- Audit provisions software vendor generally has right to audit use
 - Retain right to self audit or, at least, protect Government rights
 - Require appropriate security clearances
 - Require advance notice of audit
 - Remove any payment obligations
 - Include confidentiality clause to preclude sharing results
 - Know how to count actual use in your organization



- Termination and rights of survival clauses
 - Understand impact to software use and maintenance rights if order is terminated without completion of expected payments
 - Address retention of rights when vendors are bought by other companies or when products are repackaged
 - Beware of clauses giving vendor the right to terminate or to limit the Government's termination rights
- Transfer rights
 - Check for limitations on movement or transfer within or between components, organizations, programs, etc.
 - Consider notice requirements
 - Address software rights in the event of merger or divestiture



- Distribution address delivery options
 - Hard copy media
 - Duplication rights
 - Electronic distribution central distribution, user access, etc.
- Get the best pricing
 - Conduct and consider market research findings
 - Ensure discounts are appropriate for the size of the order
 - Spot discounting from ESI/SmartBUY/GSA price is expected when buying large quantities
 - Contact the Software Pricing Manager if ESI/SmartBUY is not the best value
 - Ensure media is included with the license
 - Consider options to fix-price future requirements
 - Ensure price terms are protected under changed conditions



- Additional terms for consideration as appropriate
 - Disaster recovery
 - Test and development
 - Terms for times of conflict
 - Escrow agreement
- Document negotiated changes in resultant contract
 - Use definitions
 - Use examples to eliminate ambiguity
 - Clearly define additional license rights and specify the addendum changes that are at no additional cost
 - Check that a right granted in one area is not changed or removed by another provision

Software Maintenance



- Don't forget maintenance
 - Also called "Software Assurance" or "SA"
 - Understand what "maintenance" includes:
 - Right to future versions/releases/upgrades and patches
 - Technical support
 - Other benefits, such as training
 - Determine if maintenance is considered product or service
 - GSA schedule definitions have changed
 - Portions of software maintenance may be considered "product"
 - Could impact coverage period and funding type

Software Maintenance



- Clearly define coverage period
 - Fixed Term (1 year, 3 years) varies by publisher
 - Term may be based on date of order or stated end date. Price should be prorated if not full term
 - Crossing fiscal years may produce funding gap
- Avoid "all or none" provision in event some licensees drop out
 - Ensure maintenance discount is percentage off negotiated contract price vice list or GSA price
 - Check the maintenance ratio to license purchase price and measure against current market conditions
 - Request maintenance escalation be "capped" for a number of years
 - Fielded Systems
 - Ensure program integrator coordinated with PD CHESS
 - Define responsible party for providing software assurance/maintenance

Our Approach to this Session



- 1. Provide Foundational Knowledge
 - ESI

- What is a EULA?
- Army SPM CHESS
- EULA Overview
- 2. Procedural Aspects of Licensing
- 3. Structural Framework
- 4. Key Terms and Conditions
- Standard Publisher Starting Position
 Sample Language
- Sample Language

Checklist

DoD Position

What is a EULA?



- EULA means End User License Agreement
- The term "EULA" has multiple connotations for commercial software.
- Other names include:
 - Purchaser Use Rights
 - Software License Agreement
 - Software User Rights Agreement
 - Other
- For this session, we will refer to EULAs as the comprehensive license agreement between the government and a Publisher or Reseller – which can extend beyond simply end user's rights

Different Types of EULAs



- Commercial EULA
- GSA
- Government
- Enterprise Software Initiative (ESI) Enterprise Software Agreement (ESA) Version
- Always ask if a Government EULA is available
- Order of precedence is key

Why this Topic is Important



- Billions of dollars are invested in commercial software across the DoD
- Licensing rights are complicated and impact total cost of ownership (TCO) positively (if done right) and negatively (if done wrong)
- Agreeing to standard terms and conditions can be hazardous to your program's health and finances
- EULAs change constantly, we have to stay on top of current trends and best practices
- Consistency in our licensing approaches yields better results.
- The DoD effort to function as an enterprise means we all should operate with the same commercial licensing strategies and contractual frameworks

Our Approach to this Session



- 1. Provide Foundational Knowledge
- ESI

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- Army CHESS
 EULA Overview

2. Procedural Aspects of Licensing

- 3. Structural Framework
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- Standard Publisher Starting Position
 Sample Language
- Sample Language

Checklist

DoD Position

Software Acquisition Sample Proces

1. Assemble the Right Team

- Requirements personnel may understand technology but not licensing
- Requirements side may not have the enterprise perspective
- Bring contracting personnel in as early as possible

2. Define the Requirement

- What do you need to do with the software?
- Define need to manipulate data versus static data (viewing only)
- State if inward/outward sharing requirement (Netcentricity)
- Address scope of project test and development versus full use license
- Describe your requirement give examples and definitions to reduce ambiguity.
- Describe your customer base clearly: Government, Civilian, Military, Contractors supporting Government, non-human devices, etc.
- How many years coverage are needed?
- Has software distribution been considered?
- Is there a need for an Escrow Agreement?

3. Select Software

4. Validate Pricing

5. Document
Negotiated Changes

UNCLASSIFIED

Phase 3



3. Select Software

- By name vs. licensing model
- Seek advice from consultants, license experts DoD ESI Software Product Managers (SPMs), software attorney, other DoD components.
- Leverage existing contracting vehicles
- Will one product or multiple products meet the requirements?
- How will the product or vendor be determined? (get clarity on the process to decide the products to acquire).
 - Competitive -- provide technical evaluation criteria
 - Limited or sole source -- provide brand name justification

Phase 4



4. Validate Pricing

- Price may not be the true cost.
- Best Value analysis includes, TCO, Terms & Conditions, and Price
- Obtain price estimate based on market research
- Request flat-lined maintenance
- Get the best pricing
- Conduct and consider market research findings
- Ensure discounts are appropriate for the size of the order
- Spot discounting is expected when buying large quantities
- Contact the SPM if ESI/SmartBUY is not the best value
- Ensure media is included with the license
- Consider options to fix-price future requirements
- Ensure price terms are protected under changed conditions

License Models (3.a)





License Models (3.a - Further Defined)



Concurrent Users

3. Select Software

 License price is based on the maximum number of users who could be using the software at any given point in time

Named Users

 License price is based on the total number of individuals in the user population

Processor Based

 License price is based on the number of computers (CPUs) and Cores to which the software can be deployed

License Type and Use Rights Checklist (3.2)



- License Type
 - Identify how the product is licensed (named user, concurrent user, device, CPU, etc.)

3. Select Software

- Specify if ownership is "perpetual" versus "term"
- Use Rights
 - Identify the entities that are permitted to use the software (government and contractor)
 - Fully define terms such as: Enterprise, program, affiliate, internal use and subsidiary
 - Check for additional rights such as laptop and home use
 - Check for unusual license metrics such as use charges tied to virtual machines or remote access
 - Check for specific license restrictions such as to hardware make/model or geographic location

Contracting Vehicle Priority Sequence (3.b)

COMPUTER HARDWARE, ENTERPRISE SOFTWARE AND SOLUTIONS

- Use Preferred Methods First
 - FAR 8.002 & DFARS 208.002 specify use of Government supply sources



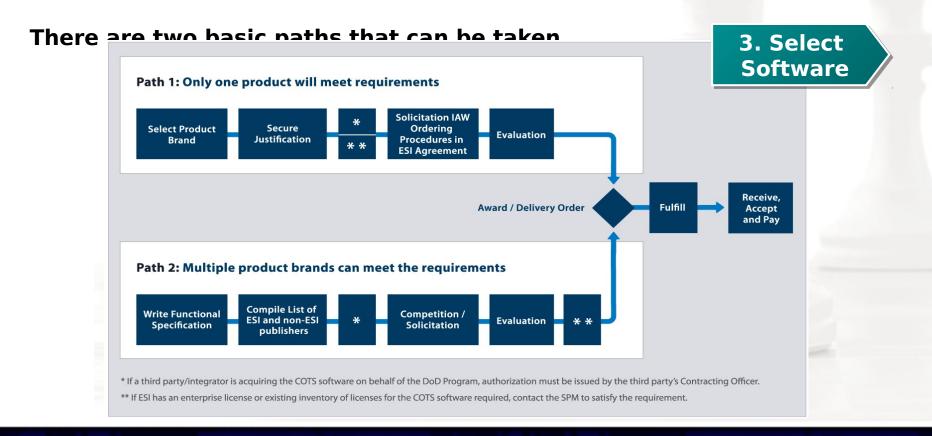
- Considerations most pertinent to COTS software acquisition
- Inventory check for "Inventory Box" at www.esi.mil
 - ESI/SmartBUY
 - ESI specifically cited in DFARS 208.74
 - DoD SmartBUY policy memo of 22 DEC 2005
 - DoDI 5000.2, Encl. 5, para. 1.c.6
 - AFARS and AR 25-1
 - GSA schedule
 - Other existing contracts
 - Open market

COTS Software Ordering Process



The following chart summarizes the process for a DoD Program to follow when it has been determined that:

- a. Commercial software may satisfy the DoD Program's requirement and
- b. ESI has an agreement in place for the product(s) required.



Phase 5



5. Document Negotiated Changes

- Use definitions
- Use examples to eliminate ambiguity
- Clearly define additional license rights and specify the addendum changes that are at no additional cost
- Check that a right granted in one area is not changed or removed by another provision

Our Approach to this Session



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3. Structural Framework

- 4. Key Terms and Conditions
- Standard Publisher Starting Position
 Sample Language
- Sample Language

Checklist

DoD Position

Structural Considerations

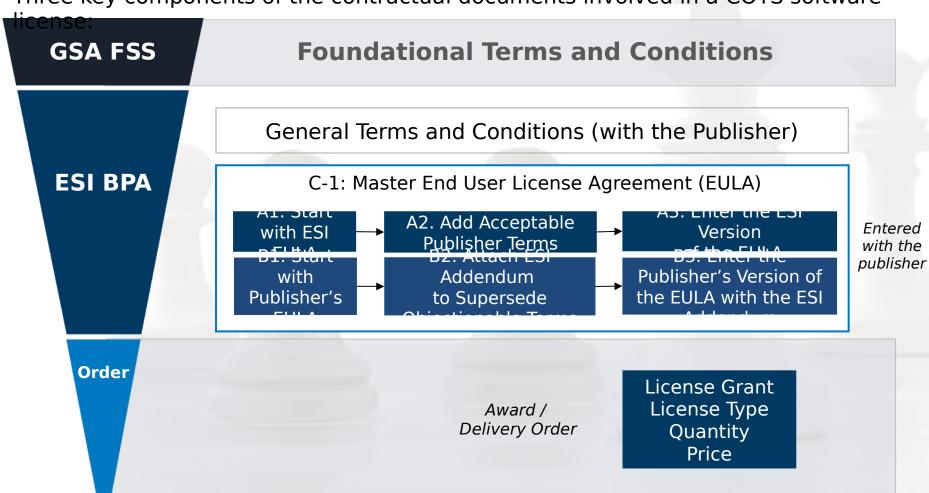


- COTS software procurement generally involves multiple, <u>and often</u> <u>conflicting</u>, sets of Terms and Conditions (Ts & Cs)
 - GSA schedule forms base for orders
 - ESI/SmartBUY agreement based on GSA schedule but with negotiated Ts & Cs
 - Every software publisher has a unique End User License Agreement (EULA)
 - Vendor (may be publisher's reseller) proposal may add additional Ts & Cs
- DoD ESI license agreements resolve conflicts among Ts & Cs
- Especially when buying outside ESI, check EULA
 - Check for provisions that conflict with Federal procurement laws
 - Check to ensure rights are clearly defined, quantifiable, predictable

COTS Software License Framework for BPA-based Orders



Three key components of the contractual documents involved in a COTS software



Our Approach to this Session



- 1. Provide Foundational Knowledge
 - ESI

What is a EULA?

Army CHESS

- EULA Overview
- 2. Procedural Aspects of Licensing
- 3. Structural Framework
- 4. Key Terms and Conditions
- Standard Publisher Starting
 Position
- Sample Language

- Sample Language
- Checklist

Top 12 Key Clauses



- 1. Warranty
- 2. Transfer Rights
- 3. Third Party Software
- 4. Audit Rights
- 5. Click Wrap Licenses
- 6. Automatic Renewals
- 7. Termination Rights
- 8. Governing Law
- 9. Order of Precedence
- 10. Installation Restrictions
- 11. Virtualization
- 12. Maintenance / Assurance

1. Warranty



Publisher Position:

The Software company does not guarantee the software will work! (although most Publishers warrant the software will perform in accordance with the system documentation).

DoD Position:

Require a warranty stating the software shall meet specifications and requirements from go-live plus one year.

DoD Buyer Checklist

- Understand the warranty protection afforded by FAR.
- ☐ Ensure the warranty begins with productive use, not with delivery.
- Ensure the buyer's requirements are adequately documented.

1. Sample Publisher Warranty Clause (Unacceptable)



"YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, USE OF THE XXX SOFTWARE AND SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE XXX SOFTWARE AND SERVICES PERFORMED BY THE XXX SOFTWARE ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND XXX AND XXX LICENSORS (COLLECTIVELY REFERRED TO AS "XXX" FOR THE PURPOSES. OF SECTIONS X AND X) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE XXX SOFTWARE AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS."

1. Sample DoD Warranty Clause (Acceptable)



SOFTWARE WARRANTY.

FAR 52.212-4(o)

The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

BPA

PUBLISHER WARRANTS FOR ONE (1) YEAR FROM THE DATE ON WHICH THE SOFTWARE SPECIFIED IN A DELIVERY ORDER DOCUMENT IS FIRST USED IN PRODUCTION BY DOD THAT THE SOFTWARE WILL PERFORM IN ALL MATERIAL RESPECTS THE FUNCTIONS DESCRIBED IN THE DOCUMENTATION WHEN OPERATED IN ACCORDANCE WITH (a) THE DOCUMENTATION ON A SUPPORTED PLATFORM [OR] (b) IN THE DOD REQUIREMENTS SPECIFIED IN THE DOD SOLICITATION.

2. Transfer Rights



Publisher Position:

You may not transfer the software.

Sample Publisher Clause (Unacceptable)

xxx Software Company grants to Customer a nonexclusive and nontransferable license.

DoD Position:

Allow for software license transfer rights within the DoD.

DoD Buyer Checklist

- □ Add language in the Terms and Conditions (Ts & Cs) of your order with those Ts & Cs taking precedence over the EULA that allow for transfer of your licenses within an affiliate of DoD.
- ☐ At a minimum, obtain transfer rights within your component (e.g. Navy).

Other Implications:

Check inventory available before licensing new software.

2. Sample Dod Transfer Rights Clause (Desirable)



The Department of Defense (DoD) shall have the right, without the prior written consent of the Publisher or its Authorized Resellers, to assign, reassign, or transfer software licenses or DoD's rights in the Software to an "Affiliate" of DoD, to include any governmental organization or commercial entity that is managed, operated or controlled by the DoD.

Such authorization includes sublicensing, assignment or transfer among or between "Authorized Users". In the event an Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another DoD agency, the agency shall have the right to assign the affected program licenses to a successor. The licensed agency and the successor agency agree to be bound to this EULA. The transferee shall be bound by the license metrics and limitations in this license. DoD shall complete any required Licensor documentation required to facilitate the transfer of license and continuation of support for the transferee.

3. Third Party Software



Publisher Position:

You shall agree to third party Publisher's terms for software embedded or used with the software you are purchasing.

DoD Position:

DoD must be aware of third party software requirements embedded within the EULA and weigh the risk to their procurement.

Other Implications:

Embedded third party software could increase the cost of procuring this software over time.

3. Third Party Software (may include a Click Wrap) (Unacceptable)



Sample EULA

- "For non xxx software and documentation delivered in connection with this agreement which is separately licensed by a third party. Customers rights and responsibilities with respect to such software or documentation shall be governed in accordance with the third party's applicable software license. Customer shall, on request, enter into one or more separate "click accept" license agreements or third party license agreements as part of the installation and/or download process which shall supersede this agreement with respect to the non xxx branded software or documentation covered by such license."
- Bottom Line: Click it you accept it and do you know what you just did?
 Can we say potential compliance problems!
- What do you do? Clearly understand what separate third party agreements they are referencing. Understand what those EULAs state and try to eliminate this requirement in your Terms and conditions with those taking precedence.

3. Third Party Software (may include a Click Wrap) (Desirable)



- Publisher has obtained all necessary licenses for DoD to any Third Party Materials (including without limitation, all Open Source licenses) provided with each Product;
- Publisher complies with and shall continue to comply with all third party licenses (including, without limitation, all Open Source licenses) associated with any Third Party Materials provided with each Product;
- To the extent any Third Party Materials are provided with a Product, DoD's use of such Product as provided by Publisher and in accordance with this Agreement or any Delivery Orders issued hereunder will not be in conflict with any third party license requirements and will satisfy all conditions on use, modification or distribution of any such Third Party Materials without the need for any additional, unanticipated action or license fees on DoD's part;
- DoD does not and will not need to procure any rights or licenses to any patents or other third-party intellectual property rights to use as intended in this Agreement or any Delivery Orders issued hereunder the Product delivered by Publisher.

4. Audit Rights



Publisher Position:

You shall pay for an audit and the software company can audit whenever they want.

DoD Position:

Buyer shall perform self-audits and report no more than once per year.

DoD Buyer Checklist

- □ Audit clauses will be self audit clauses and not allow access to a government network without prior consent and cleared individuals.
- ☐ Audit reports will not occur more than once per year.
- ☐ Audit clauses may not contain language that obligates the government to pay for the audit.

Other Implications:

Put in place a process for IT asset management or "True up/True down" counting system. Know how to count actual use in your organization.

4. Sample Publisher Audit Clause (Unacceptable)



"You agree that xxx software company may audit your use of the Software for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Software by you other than in full compliance with the terms of this Agreement, you shall reimburse xxx software company for all reasonable expenses related to such audit in addition to any other liabilities you may incur as a result of such noncompliance."

4. Sample DoD Audit Clause (Desirable)



"In lieu of any audit provisions in the license agreement, Licensee may perform an internal audit and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses in use."

At least, protect Government rights:

Require appropriate security clearances

Require advance notice of audit

Remove any payment obligations

Include confidentiality clause to preclude sharing results

5. Click Wrap



Publisher Position:

You shall click it and accept it.

DoD Position:

Click wrap licenses have no force or effect. The signed EULA takes precedence over any click wrap licenses.

DoD Buyer Checklist

☐ The ESI EULA includes language giving precedence of the ESI EULA over a click wrap license, thereby voiding any conflicting click wrap license terms and conditions.

Other Implications:

Users can click 'accept' if necessary without jeopardizing the terms of the

ESI EULA.

5. Sample Publisher Click Wrap Clause (Unacceptable)



"NOTICE TO ALL USERS: PLEASE READ THIS CONTRACT CAREFULLY, BY CLICKING THE ACCEPT BUTTON OR INSTALLING THE SOFTWARE, YOU (EITHER AN INDIVIDUAL OR A SINGLE ENTITY) AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN CONTRACT SIGNED BY YOU. IF YOU DO NOT AGREE, CLICK ON THE BUTTON THAT INDICATES THAT YOU DO NOT ACCEPT THE TERMS OF THIS CONTRACT AND DO NOT INSTALL THE SOFTWARE. IF YOU PURCHASED THE SOFTWARE ON TANGIBLE MEDIA (e.g., CD) WITHOUT THE OPPORTUNITY TO REVIEW THIS LICENSE AND YOU DO NOT ACCEPT THIS CONTRACT, YOU MAY OBTAIN A REFUND OF THE AMOUNT YOU ORIGINALLY PAID IF YOU: (A) DO NOT USE THE SOFTWARE AND (B) RETURN IT, WITH PROOF OF PAYMENT, WITHIN THIRTY (30) DAYS OF THE PURCHASE DATE TO THE LOCATION FROM WHICH IT WAS OBTAINED."

5. DoD Click Wrap Clause (Acceptable)



The terms and conditions of this EULA take precedence over any conflicting Publisher license terms and conditions including those found in a Publisher or Third Party Software Click Wrap license, whether presented in writing or electronically; whether presented prior to or subsequent to executing this EULA. DoD and its users shall not be bound by the terms of a Click Wrap license encountered during installation or at any time thereafter, notwithstanding DoD users clicking 'Accept' in order to continue using the Software.

5. EULAs and Click Wraps



Click-Wrap License Defined

- Publishers of shrink-wrap software or on-line applications generally use click-wrap licenses to obtain end user consent. (Mostly focused on consumers.)
- When the customer is a corporation or other legal entity, there is often a negotiated written license agreement, in addition to the click-wrap license.
- In some cases, "click-wrap license" and "EULA" have been used synonymously.
- ESI refers to <u>all</u> software licenses as EULAs and refers to clickwrap licenses as one specific kind of EULA.

Avoiding Conflict

- Publishers who use both EULAs and click-wrap licenses seldom change the terms of the click-wrap licenses.
- Negotiated written licenses may inadvertently or purposely end up with terms contradicting the click-wrap language.
- The government needs to ensure BPAs and Order documents include language voiding the terms and conditions of click-wrap licenses.

6. Renewal Rights



Publisher Position:

You shall have automatic renewals.

DoD Position:

Buyer shall not accept automatic renewal provisions......

DoD Buyer Checklist

□ Avoid automatic renewal clauses. Potential anti-deficiency issues could arise.

Other Implications:

DoD needs a mechanism for alerting license holders when subscriptions or Maintenance and Support agreements are about to expire.

6. Sample Publisher Renewal Clause (Unacceptable)



"Automatic renewal: Unless you terminate your software in accordance with this Agreement and the Software Purchase Agreement, xxx software company will automatically renew your Subscription License at the end of the agreed subscription period/term, for a like period of time, by directly charging your credit card or debiting your debit card for the then current renewal price for the Software. Any renewal term and your right to receive Software support and Software updates during a renewal term will be effective only after our receipt of the foregoing payment and conditioned upon the foregoing payment constituting and continuing to be valid and good funds. Unless and until this Agreement and your license is cancelled in accordance with the terms of this Agreement and the Software Purchase Agreement, you hereby authorize xx software company to charge your credit card (or other approved facility) to pay for the renewed subscription. If you have selected a method of payment other than credit card or debit card, your subscription will only be renewed if you provide us with a valid payment prior to the date of renewal. We will email you prior to this date to remind you to renew your account."

7. Termination Rights



Publisher Position:

You shall be terminated.

DoD Position:

Buyer shall adhere to the checklist items below.

DoD Buyer Checklist

- □ Understand the impact to software use and maintenance rights if an order is terminated without completion of expected payments
- □ Address retention of rights when vendors are bought by other companies or when products are re-packaged
- ☐ Beware of any clause that gives the vendor the right to terminate or limit the Government's rights upon termination

Other Implications:

Make sure all parties using the software understand how the software is to be used. Is this particular software worth the risk?

7. Sample Publisher Termination Clause (Unacceptable)



"This License is effective until terminated. Your rights under this License will terminate automatically or otherwise cease to be effective without notice from xxx software company if you fail to comply with any term(s) of this License. Upon the termination of this License, you shall cease all use of the xxx Software."

7. Sample DoD Termination Clause (Acceptable)



FAR

FAR 52.233-1, requires the contractor to submit a claim to the contracting officer if it believes the Government to be in breach, and to continue performance during the pendency of the claim.

BPA General Ts and Cs

<u>Effect of Termination by Contractor</u>. Notwithstanding any termination of this Agreement by Contractor, including any Attachments to this Agreement, DOD shall have the right to continue use of any Products and Documentation that were purchased by a Delivery Order issued prior to the termination of the Agreement.

BPA Attachment C-1 EULA

Licensor may not terminate this Agreement for non-payment.

The DoD may terminate this Agreement without cause by giving Licensor thirty (30) calendar days prior written notice whenever the DoD shall determine that such termination is in the best interest of the DoD.

8. Governing Law



Publisher Position:

You shall be governed by the controlling law and jurisdiction referenced in the EULA.

DoD Position:

Federal Law shall apply and govern the terms of the software license.

DoD Buyer Checklist

- ☐ The terms and conditions of the EULA or the ordering documents shall reflect that federal law will apply to the government contract and therefore federal courts will have jurisdiction on disputes
- □ Buyers should be careful not to allow a COL provision from the Publisher. Such a provision would be invalid by law, but it could cause an unnecessary controversy with the Publisher

8. Sample Publisher Governing Law Clause (Unacceptable)



"Controlling Law, Jurisdiction: If you acquired, by reference to the address on the purchase order accepted by the Approved Source, the Software in the United States the Agreement and warranties are controlled by and construed under the laws of the State of California, United States of America"

8. Sample DoD Governing Law Clause (Acceptable)



Governed by FAR

Depending on the cause of action (e.g., tort, breach of contract, infringement of copyright or patent), both venue and the statute of limitations are usually mandated by applicable Federal law (e.g., the Federal Tort Claims Act, 28 USC 1346(b); the Contract Disputes Act, 41 USC 7101 et seq; the Tucker Act, 28 USC 1346(a)(1)). Arbitration requires prior guidance by head of agency promulgated via administrative rulemaking (5 USC 575(c)); none has been issued by GSA because GSA considers the Board of Contract Appeals to be an adequate, binding ADR alternative. These types of clauses should be deleted from Government contracts. In a narrow subset of claims where U.S. District Courts have concurrent jurisdiction with the U.S. Court of Federal Claims (generally for claims under \$10,000), it is acceptable (if otherwise in the Government's interests) to agree to venue in a U.S. District Court located in a specific state.

9. Order of Precedence



Publisher Position:

You shall accept the EULA as the ruling document over the Terms and Conditions of your contract/order.

DoD Position:

DoD terms shall take precedence over any conflicting terms in a vendor's agreement.

DoD Buyer Checklist

- If you are not able to change the EULA, have the terms of your order take precedence over the EULA
- ☐ If you are working with a reseller, get a letter from the publisher/OEM indicating that they have agreed to this

9. Sample Publisher Order Precedence Clause (Unacceptable)



This Agreement shall control over any additional or conflicting terms contained in a purchase order for the Software submitted by You, or contained in any Terms and Conditions submitted by You, and such additional or conflicting terms are expressly rejected unless they have been specifically accepted and agreed to in writing by xxx or its subsidiaries.

9. Sample DoD Order of Precedence Clause (Acceptable)



FAR 52.212-4(s)

Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

BPA - General Terms and Conditions

In the event of any inconsistency between the general terms and conditions of this Agreement and the terms and conditions of any Attachment to this Agreement, the general terms and conditions shall take precedence over the terms and conditions of any Attachment, unless the parties specifically agree in writing that a term or condition of an Attachment has precedence over the corresponding term or condition in the general terms and conditions of the BPA. All orders placed against this BPA shall incorporate the terms and conditions of this BPA, including all Attachments. In the event of a conflict between an ordering document (including the Contractor's license, support, maintenance, or services agreements) and this BPA, the BPA shall take precedence.

10. Installation Restrictions



Publisher Position:

You shall only install the software on hardware approved by the software vendor.

DoD Position:

Be aware of restrictions since they could impose significant cost.

Other Implications:

This is a risk that you may not overcome. It should weigh on your decision to acquire the software

10. Sample Publisher Installation Restriction Clause (Unacceptable)



"Licensee agrees to install the Software only on hardware identified by Licensee pursuant to this Agreement that has been previously approved by Reseller in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software"

11. Virtualization



Publisher Position:

You shall buy software licenses for your virtualized hardware.

DoD Position:

Be aware of this requirement as it can impact your total cost considerably.

DoD Buyer Checklist

- Negotiate in your Terms and Conditions ratios for the virtualization.
- Remember when you virtualize the hardware you still need a software license for the virtualized servers.

Other Implications:

You could be non-compliant and require additional funding if larger servers are acquired without proper coordination.

11. Sample Publisher Virtualization Clause



"XXX Software is designed for use with a Windows operating system. Single-user licenses may not be installed or used in a virtualized environment in order to or in a manner that circumvents the single user license type as specified in Sections xxx and xxx herein. Not all virtualization methods may be supported. The use of licenses with virtualized environments will be at the Licensee's own risk."

Measure Twice Cut Once



- Use the Software Buyer's Checklist
- The government contract and delivery order terms and conditions will take precedence over the publisher's standard EULA
- If a new EULA comes out, there might be terms that try to impose the new version of the EULA when it comes into effect – this is not acceptable
- Be aware of added expense due to terms that are restrictive or need to have a certain environment or other third party products to make the software work
- Consult with your experts



Protect Your Software Project From Going "Bump in the Night"



- Describe your requirement to contracting activity:
 - Define need to manipulate data versus static data (viewing only)
 - State if inward/outward sharing requirement (Netcentricity)
 - Address scope of project test and development versus full use license
 - Address transferability rights
 - Specify how many years will you need to contract
 - Obtain price estimate based on market research
 - Request flat-lined maintenance
 - Specify audit clause conditions
 - Plan for asset management or "True up/True down" counting system
 - Consider escrow agreement
 - Software distribution



Protect Your Software Project From Going "Bump in the Night"



- Describe your user base clearly
 - Government, Civilian, Military, Contractors supporting Government, non-human devices, etc.
 - How will the product or vendor be determined?
 - Competitive provide technical evaluation criteria
 - Limited or sole source provide brand name justification
- Use definitions and examples to reduce ambiguity
- Obtain legal review of EULAs and Ts & Cs
- Use SPM and other subject matter experts
- Document negotiated changes in resultant contract!!!



Contracting Office Concerns



- Requirements determination
 - Market research
 - Certificate of Networthiness
 - Competitive or sole source
 - Technical evaluation
 - Brand name justification
- Follow the order of precedence
 - FAR 8.002 & DFARS 208.002 specify use of Government supply sources
 - Considerations most pertinent to COTS software acquisition
 - Inventory check for "Inventory Box" at www.esi.mil
 - ESI/SmartBUY
 - ESI specifically cited in DFARS 208.74
 - DoD SmartBUY policy memo of 22 DEC 2005
 - DoDI 5000.2, Encl. 5, para. 1.c.6
 - GSA schedule
 - Other existing contracts
 - Open market

Brand Name, Documentation Requirement



- Document and approve IAW FAR 8.405-6
 - Orders simplified acquisition threshold-\$650K -KO approval
 - Orders \$650K-\$12.5M -Competition advocate or official described in FAR 6.304(a)(3) or (a)(4)
 - Orders \$12.5-85.5M -HCA or an official described in FAR 6.304(a)(3)(i) or (ii)
 - Orders >\$85.5M -AAE
- Post on e-buy

Ordering From BPAs



- FAR 8.405-3(b), actions >\$3,000
- Single BPA, FAR 8.405-3(b)(1)
 - Orders may be placed without further competition, if BPA was established in compliance with FAR 8.405-1 and 8.405-3(a)
- Multiple BPAs, FAR 8.405-3(b)(2)
 - Provide requirement and evaluation criteria to all BPA holders
 - Evaluate and make best value decision (FAR 8.404(d))
 - Place order with best value BPA holder
- Must justify when restricting consideration unless awarded in compliance with FAR 8.405-1 and 8.405-3(a)
 - To an item peculiar to one manufacturer/publisher (e.g., a particular brand name, product, or a feature of a product, peculiar to one manufacturer)
 - A brand name item, whether available on one or more schedule contracts, is an item peculiar to one manufacturer. Brand name specifications shall not be used unless the particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's need.